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P.C.V. - 163

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Ill. S. S. C.

VOLUME I.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941 1942

No. 754

THE UNITED STATES OF AMERICA, PETITIONER

vs.

WILLIAM R. JOHNSON

No. 815

THE UNITED STATES OF AMERICA, PETITIONER

vs.

JACK SOMMERS, JAMES A. HARTIGAN, JOHN M. FLANAGAN, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 12, 1941
CERTIORARI GRANTED FEBRUARY 2, 1942

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

7500 *vs.*

WILLIAM R. JOHNSON,
Defendant-Appellant.

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

7501 *vs.*

JACK SOMMERS, JAMES A. HARTIGAN, JOHN M. FLANAGAN, WILLIAM P. KELLY AND STUART SOLOMON BROWN,
Defendants-Appellants.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

INDEX.

447348—42

1 IN THE DISTRICT COURT OF THE UNITED STATES, Placita.

For the Northern District of Illinois,

Eastern Division.

Pleas had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the division and district aforesaid on the first Monday of March (it being the twenty-ninth day of March the indictment was filed) in the year of our Lord One Thousand Nine Hundred and Forty and of the Independence of the United States of America the 165th year.

Present: The Honorable Charles E. Woodward, The Honorable Michael L. Igoe, The Honorable John P. Barnes, The Honorable William H. Holly, being judges of said Court.

The Honorable John P. Barnes, Trial Judge.
William H. McDonnell, U. S. Marshal.
Hoyt King, Clerk.

Filed May 29, 1940. 2 And on, to wit, the 29th day of March A. D. 1940 came the defendants by their attorneys and filed in the Clerk's office of said Court certain INDICTMENT in words and figures following, to wit:

3 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division

Of the March Term, in the year 1940.

32168.

Count One.

Northern District of Illinois, } ss.
Eastern Division. }

The Grand Jurors for the United States of America duly empaneled and sworn in the District Court of the United States for the Eastern Division of the Northern District of Illinois at the December Term of said Court in the year 1939, having begun but not finished during said December Term of Court among other things an investigation of the matters charged in this indictment, and having continued to sit by order of this Court in and for said division and district during the February and March Terms of said Court for the purpose of finishing investigations begun but not finished during said December Term of Court, pursuant to request of the United States Attorney and upon motion of the Grand Jury, and inquiring for said division and district at the March Term of said Court in the year 1940, upon their oaths do present and charge that:

William R. Johnson, alias W. R. Johnson, alias "Bill" Johnson, hereinafter in this indictment sometimes called the defendant, whose full and true name other than as herein stated is unknown to the Grand Jurors, heretofore, on, to wit, the 15th day of March, 1937, at Chicago aforesaid, in the division and district aforesaid, and within the jurisdiction of this Court, unlawfully did wilfully and knowingly attempt to defeat and evade a large part, to wit,

4 $313,401.32 of a tax upon his net income for the calendar year 1936, which said tax was imposed by an Act

of Congress approved June 22, 1936, which Act is known as the Revenue Act of 1936, which said unlawful and wilful attempt to defeat and evade said tax was by the means and in the manner following, that is to say:

(1) That the said defendant during the calendar year 1936, and at all times herein mentioned, was an individual, a citizen of the United States, who was unmarried and who had no dependents, and whose legal residence and principal place of business were at Chicago aforesaid, within the division and district aforesaid, and within the First United States Internal Revenue Collection District of Illinois, and who was then and there a person required by law, after the close of the said calendar year 1936, and on or before March 15, 1937, to make to the Collector of Internal Revenue for said Collection District, under oath, a return for the calendar year 1936, stating specifically the items of his gross income and the deductions and credits allowed by Title I (Income Tax) of the said Act of Congress, by reason of the fact, which the said Grand Jurors upon their oaths charge to be a fact, that the regular accounting period of the defendant was on the basis of the calendar year and not on the basis of a fiscal year, and by reason of the fact, which the said Grand Jurors upon their oaths charge to be a fact, that during the said calendar year the said defendant derived and had and received a gross income amounting to more than $5,000.00, to wit, $607,399.48, derived as follows, that is to say:

Interest on bank deposits, etc.	$ 2,111.85
Rents and Royalties	16,189.03
Income from business	589,098.60
Total	$607,399.48

5 and that during the said calendar year the said defendant was entitled to and allowed by the provisions of said Title I of said Act of Congress, deductions in the sum of, to wit, $1,573.84 and no more, on account of the following:

Interest paid	$1,500.00
Taxes paid	73.84
Total	$1,573.84

and that he, the said defendant, had and derived and received a net income, to wit, the gross income less the deductions allowed by law of, to wit, $605,825.64, upon which

said net income of said defendant for said calendar year an income tax of, to wit, $385,316.67 under the Act of Congress aforesaid, became and was due by him on, to wit, March 15, 1937, to the United States of America, one-fourth of the amount of which at least should then and there have been paid by the said defendant to the said Collector of Internal Revenue aforesaid;

(2) That the said defendant, well knowing the premises aforesaid, and being indebted to the United States of America in the amount aforesaid, by reason of the said tax imposed by the aforesaid Act of Congress, and then and there well knowing that the gross income and the net income derived and had and received by him during the said calendar year were as aforesaid, did, on, to wit, March 15, 1937, at Chicago aforesaid, in the division and judicial district aforesaid, unlawfully, wilfully and knowingly attempt to defeat and evade a large part, to wit, $313,401.32 of the said tax upon his said net income for the said calendar year, and as a means of so unlawfully, wilfully and knowingly attempting to defeat and evade the said tax did, on, to wit, March 12, 1937, at Chicago aforesaid, in the division and judicial district aforesaid, make under his oath an
6 income tax return for said calendar year and thereafter on, to wit, March 15, 1937 did file and cause to be filed with said Collector of Internal Revenue said income tax return for the said calendar year, prepared and sworn to as aforesaid, stating specifically therein the items of his gross income for said calendar year to have been the sum of $163,466.58 and no more, derived as follows:

Interest on bank deposits, etc.	$ 2,111.85
Rents and Royalties	16,189.03
Net income from business	145,165.70
Total	$163,466.58

and stating specifically the items of deduction allowed by the Act of Congress aforesaid for said calendar year 1936 to have been the sum of $1,573.84 on account of the following:

Interest paid	$1,500.00
Taxes paid	73.84
Total	$1,573.84

and stating therein no other items of deduction, and stating specifically the net income, to wit, the said gross income

less the said deductions allowed by law for said calendar year to have been the sum of $161,892.74 and no more, and showing the total tax due and payable by him thereon to have been $71,915.35 and no more;

And the said defendant then and there on, to wit, March 15, 1937, paid to the Collector of Internal Revenue for the said Internal Revenue Collection District of Illinois, the sum of, to wit, $17,978.84, and thereafter the further sum of $54,661.44, and furthermore, the said defendant has never made and filed with the said Collector of Internal Revenue any other income tax return for the said calendar year stating specifically the items of his gross income
7 and the deductions and credits allowed by law, and has never made any other payment or payments to said Collector or to any other proper officer of the United States of any sums of money on account of his said tax debt for said calendar year except the sums aforesaid;

And as a further means of so unlawfully, wilfully and knowingly attempting to evade and defeat said tax of, to wit, $313,401.32 for the said calendar year 1936, he, the said defendant, William R. Johnson, with aliases as aforesaid, well knowing all the premises aforesaid, did conceal and cause to be concealed from any and all proper officers of the United States, his gross and net incomes aforesaid, and the sources of said gross and net incomes, and all books and records reflecting said gross and net incomes and the sources thereof;

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that heretofore, to wit, during the calendar year 1936 and up to and including March 15, 1937, and continuously thereafter up to and including the date of the filing of this indictment, in the Northern District of Illinois and within the First Internal Revenue Collection District of the United States for the State of Illinois, and within the jurisdiction of this Court, William R. Skidmore, alias W. R. Skidmore, alias Billy Skidmore; William Goldstein, alias Bill Goldstein; Andrew J. Creighton, alias A. J. Creighton, alias "Red" Creighton; Jack Sommers, alias J. Sommers; Edward Wait, alias Ed. Wait; James A.
8 Hartigan, alias J. A. Hartigan, alias Jimmie Hartigan, alias J. A. Hart; John M. Flanagan, alias J. Flanagan; Orrie Alexander; William P. Kelly, alias Bill Kelly; Reginald E. Mackay, alias Reg. Mackay; Stuart Solomon Brown, alias S. S. Brown; Bernice Downey, defendants herein, well knowing all the premises aforesaid, did unlaw-

fully, feloniously, wilfully and knowingly aid, abet, conceal, induce, and procure the said defendant William R. Johnson, unlawfully, feloniously, wilfully, and knowingly to attempt in the manner aforesaid to evade and defeat the income tax aforesaid of, to wit, approximately $313,401.32 upon his, the said William R. Johnson's net income for the said calendar year 1936, by the means and in the manner aforesaid, which tax was imposed by the Act of Congress aforesaid known as the Revenue Act of 1936;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Section 143 (b), Revenue Act of 1936 (U. S. C., Title 26, Sec. 145).)

9 Second Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That William R. Johnson, alias W. R. Johnson, alias "Bill" Johnson, hereinafter sometimes called the defendant, whose full and true name other than as herein stated is unknown to the Grand Jurors, heretofore, on, to wit, the 15th day of March, 1938, at Chicago aforesaid, in the Division and District aforesaid, and within the jurisdiction of this Court, unlawfully did wilfully and knowingly attempt to defeat and evade a large part, to wit, $460,234.59 of a tax upon his net income for the calendar year 1937, which said tax was imposed by an Act of Congress approved June 22, 1936, which Act is known as the Revenue Act of 1936, which said unlawful and wilful attempt to defeat and evade said tax was by the means and in the manner following, that is to say:

1) That the said defendant during the calendar year 1937, and at all times herein mentioned, was an individual, a citizen of the United States, who was unmarried and who had no dependents and whose legal residence and principal place of business were at Chicago aforesaid, within the Division and District aforesaid, and within the First United States Internal Revenue Collection District of Illinois, and who was then and there a person required by law, after the close of the said calendar year 1937, and on or before March 15, 1938, to make the Collector of Internal Revenue for said Collection District, under oath, a return for
10 the calendar year 1937, stating specifically the items of his gross income and the deductions and credits al-

lowed by Title I (Income Tax) of the said Act of Congress, by reason of the fact, which the said Grand Jurors upon their oaths charge to be a fact, that the regular accounting period of the defendant, was on the basis of the calendar year and not on the basis of a fiscal year, and by reason of the act, which the said Grand Jurors upon their oaths charge to be a fact, that during the said calendar year the said defendant derived and had and received a gross income amounting to more than $5,000.00, to wit, $880,949.94, derived as follows, that is to say:

Interest on bank deposits, etc.	$ 2,065.00
Rents and Royalties	17,461.63
Income from business	887,446.72
Farm operating loss (Red Figure)	(26,023.41)
Total gross income	$880,949.94

and that during the said calendar year the said defendant was entitled to and allowed by the provisions of said Title I of said Act of Congress, deductions in the sum of, to wit, $83.74, and no more, on account of the following:

Contributions	$25.00
Taxes paid	58.74
Total	$83.74

and that he, the said defendant, had and derived and received a net income, to wit, the gross income less the deductions allowed by law of, to wit, $880,866.20, upon which said net income of said defendant for said calendar year an income tax of, to wit, $588,634.31 under the Act of
11 Congress aforesaid, became and was due by him, on, to wit, March 15, 1938, to the United States of America, one-fourth of the amount of which at least should then and there have been paid by the said defendant to the said Collector of Internal Revenue aforesaid;

2) That the said defendant, well knowing the premises aforesaid, and being indebted to the United States of America in the amount aforesaid, by reason of the said tax imposed by the aforesaid Act of Congress, and then and there well knowing that the gross income and the net income derived and had and received by him during the said calendar year were as aforesaid, did, on to wit, March 15, 1938, at Chicago aforesaid, in the Division and judicial District aforesaid, unlawfully, wilfully and knowingly attempt to defeat and evade a large part, to wit, $460,234.59 of the

said tax upon his said net income for the said calendar year, and as a means of so unlawfully, wilfully and knowingly attempting to defeat and evade the said tax, did, on to wit, March 14, 1938, at Chicago aforesaid, in the Division and judicial District aforesaid, make under his oath an income tax return for said calendar year, and thereafter on, to wit, March 15, 1938, did file and cause to be filed with said Collector of Internal Revenue said income tax return for the calendar year, prepared and sworn to as aforesaid, stating specifically therein the items of his gross income for said calendar year to have been the sum of $248,743.92 and no more, derived as follows:

Interest on bank deposits, etc.	$ 2,065.00
Rents and Royalties	17,461.63
Income from business	255,240.70
Farm operating loss (Red figure)	(26,023.41)
Total gross income	$248,743.92

12 and stating specifically the items of deduction allowed by the Act of Congress aforesaid for said calendar year 1937 to have been the sum of $83.74 on account of the following:

Contributions	$25.00
Taxes paid	58.74
Total	$83.74

and stating therein no other items of deduction, and stating specifically the net income, to wit, the said gross income less the said deductions allowed by law for said calendar year to have been the sum of $248,660.18 and no more, and showing the total tax due and payable by him thereon to have been $128,399.72 and no more;

And the said defendant then and there, on, to wit, March 15, 1938, paid to the Collector of Internal Revenue for the said Internal Revenue Collection District of Illinois, the sum of, to wit, $32,099.93, and thereafter the further sum of $96,299.79, and furthermore, the said defendant has never made and filed with the said Collector of Internal Revenue any other income tax return for the said calendar year, stating specifically the items of his gross income and the deductions and credits allowed by law, and has never made any other payment or payments to said Collector or to any other proper officer of the United States of any sums

of money on account of his said tax debt for said calendar year except the sums aforesaid;

And as a further means of so unlawfully, wilfully and knowingly attempting to evade and defeat said tax of, to wit, $430,234.59 for the said calendar year 1937, he, the said defendant, William R. Johnson, with aliases as aforesaid, well knowing all the premises aforesaid, did conceal and cause to be concealed from any and all proper officers of the United States his gross and net income aforesaid, and the sources of said gross and net incomes, and all books and records reflecting said gross and net incomes and the sources thereof;

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that heretofore, to wit, during the calendar year 1937 and up to and including March 15, 1938, and continuously thereafter up to and including the date of the filing of this indictment, in the Northern District of Illinois and within the First Internal Revenue Collection District of the United States for the State of Illinois, and within the jurisdiction of this Court William R. Skidmore, alias W. R. Skidmore, alias Billy Skidmore; William Goldstein, alias Bill Goldstein; Andrew J. Creighton, alias A. J. Creighton, alias "Red" Creighton; Jack Sommers, alias J. Sommers; Edward Wait, alias Ed. Wait; James A. Hartigan, alias J. A. Hartigan, alias Jimmie Hartigan, alias J. A. Hart; John M. Flanagan, alias J. Flanagan, Orrie Alexander; William P. Kelly, alias Bill Kelly; Reginald E. Mackay, alias Reg. Mackay; Stuart Solomon Brown, alias S. S. Brown; Bernice Downey, defendants herein, well knowing all the premises aforesaid, did unlawfully, feloniously, wilfully, and knowingly aid, abet, conceal, induce, and procure the defendant William R. Johnson, unlawfully, feloniously, wilfully, and knowingly to attempt in the manner aforesaid to evade and defeat the income tax aforesaid, of, to wit, approximately $460,234.59 upon his, the said William R. Johnson's net income for the said calendar year 1937, by the means and in the manner aforesaid, which tax was imposed by the Act of Congress aforesaid, known as the Revenue Act of 1936;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Section 145 (b), Revenue Act of 1936 (U. S. C., Title 26, Sec. 145).)

Third Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That William R. Johnson, alias W. R. Johnson, alias "Bill" Johnson, hereinafter sometimes called the defendant, whose full and true name other than as herein stated is unknown to the Grand Jurors, heretofore, on, to wit, the 15th day of March, 1939, at Chicago aforesaid, in the Division and District aforesaid, and within the jurisdiction of this Court, unlawfully did wilfully and knowingly attempt to defeat and evade a large part, to wit, $614,764.07 of a tax upon his net income for the calendar year 1938, which said tax was imposed by an Act of Congress approved by operation of law May 27, 1938, which Act is known as the Revenue Act of 1938, which said unlawful and willful attempt to defeat and evade said tax was by the means and in the manner following, that is to say:

(1) That the said defendant during the calendar year 1938, and at all times herein mentioned, was an individual, a citizen of the United States, who was unmarried and who had no dependents, and whose legal residence and principal place of business were at Chicago aforesaid, within the Division and District aforesaid, and within the First United States Internal Revenue Collection District of Illinois, and who was then and there a person required by law, after the close of the said calendar year 1938, and on or before March 15, 1939, to make to the Collector of Internal Revenue for said Collection District, under oath, a return for the calendar year 1938, stating specifically the items of his gross
16 income and the deductions and credits allowed by Title I (Income Tax) of the said Act of Congress, by reason of the fact, which the said Grand Jurors upon their oaths charge to be a fact, that the regular accounting period of the defendant was on the basis of the calendar year and not on the basis of a fiscal year, and by reason of the fact, which the said Grand Jurors upon their oaths charge to be a fact, that during the said calendar year the said defendant derived and had and received a gross income amounting to more than $5,000.00, to wit, $959,908.28, derived as follows, that is to say:

Interest	$ 1,318.90
Rents and Royalties	20,328.18
Income from business	960,675.62
Farm operating loss (Red)	(22,414.42)
Total	$959,908.28

and that during the said calendar year the said defendant was entitled to and allowed by the provisions of Title I of said Act of Congress, deductions in the sum of, to wit, $551.68 and no more, on account of the following:

Contributions	$500.00
Taxes paid	51.68
Total	$561.68

and that he, the said defendant, had and derived and received a net income, to wit, the gross income less the deductions allowed by law of, to wit, $959,356.60, upon which said net income of said defendant for said calendar year an income tax of, to wit, $649,295.01 under the Act of Congress aforesaid became and was due by him, on to wit, March 15, 1939, to the United States of America, one-fourth of the amount of which at least should then and there
17 have been paid by the said defendant to the said Collector of Internal Revenue aforesaid;

(2) That the said defendant, well knowing the premises aforesaid, and being indebted to the United States of America in the amount aforesaid, by reason of the said tax imposed by the aforesaid Act of Congress, and then and there well knowing that the gross income and the net income derived and had and received by him during the said calendar year were as aforesaid, did, on, to wit, March 15, 1939, at Chicago aforesaid, in the Division and judicial District aforesaid, unlawfully, wilfully and knowingly attempt to defeat and evade a large part, to wit, $614,764.07 of the said tax upon his said net income for the said calendar year, and as a means of so unlawfully, wilfully, and knowingly attempting to defeat and evade the said tax, did, on, to wit, March 4th, 1939, at Chicago aforesaid, in the Division and judicial District aforesaid, make under his oath an income tax return for said calendar year and thereafter, on, to wit, March 15, 1939, did file and cause to be filed with said Collector of Internal Revenue said income tax return for the said calendar year, prepared and sworn to as aforesaid, stating specifically therein the items of his gross income for said calendar year to have been the sum of $102,498.36, and no more, derived as follows:

Interest	$ 1,318.90
Rents and Royalties	20,328.18
Income from business	103,265.70
Farm operations loss (Red Figure)	(22,414.42)
Total	$ 102,498.36

and stating specifically the items of deduction allowed by the Act of Congress aforesaid for said calendar year
18 1938 to have been the sum of $551.68 on account of the following:

Contributions	$500.00
Taxes	51.68
Total	$ 551.68

and stating therein no other items of deduction, and stating specifically the net income, to wit, the said gross income less the said deductions allowed by law for said calendar year to have been the sum of $101,946.68 and no more, and showing the total tax due and payable by him thereon to have been $34,530.94 and no more;

And the said defendant then and there, on, to wit, March 15, 1939, paid to the Collector of Internal Revenue for the said Internal Revenue Collection District of Illinois, the sum of, to wit, $8,632.73, and thereafter the further sum of $25,898.21, and furthermore, the said defendant has never made and filed with the said Collector of Internal Revenue any other income tax return for the said calendar year, stating specifically the items of his gross income and the deductions and credits allowed by law, and has never made any other payment or payments to said Collector or to any other proper officer of the United States of any sum of money on account of his said tax debt for said calendar year except the sums aforesaid:

And the Grand Jurors aforesaid, upon their oaths aforesaid do further present that heretofore, to wit, during the calendar year 1938 and up to and including March 15, 1939, and continuously thereafter up to and including the date of the filing of this indictment, in the Northern District of Illinois and within the First Internal Revenue Collection District of the United States for the State of Illinois, and within the jurisdiction of this Court, William R. Skid-
19 more, alias W. R. Skidmore, alias Billy Skidmore; William Goldstein, alias Bill Goldstein; Andrew J. Creighton, alias A. J. Creighton, alias "Red" Creighton; Jack Sommers, alias J. Sommers; Edward Wait, alias Ed. Wait; James A. Hartigan, alias J. A. Hartigan, alias Jimmie Hartigan, alias J. A. Hart; John M. Flanagan, alias J. Flanagan, Orrie Alexander, William P. Kelly, alias Bill Kelly; Reginald E. Mackay, alias Reg. Mackay; Stuart Solomon Brown, alias S. S. Brown; Bernice Downey defendants herein, well knowing all the premises aforesaid,

did unlawfully, feloniously, wilfully, and knowingly aid, abet, conceal, induce, and procure the defendant William R. Johnson, unlawfully, feloniously, wilfully, and knowingly to attempt in the manner aforesaid to evade and defeat the income tax aforesaid of, to wit, approximately $614,-
20 764.07 upon his, the said William R. Johnson's net income for the said calendar year 1938, by the means and in the manner aforesaid, which tax was imposed by the Act of Congress aforesaid known as the Revenue Act of 1938;

And as a further means of so unlawfully, wilfully, and knowingly attempting to evade and defeat said tax of, to wit, $614,764.07 for the said calendar year 1938, he, the said defendant, William R. Johnson, well knowing all the premises aforesaid, did conceal and cause to be concealed from any and all proper officers of the United States his gross and net incomes, and all books and records reflecting said gross and net incomes and the sources thereof;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Section 145 (b), Revenue Act of 1928 (U. S. C., Title 26, Sec. 145),).

21 Fourth Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That William R. Johnson, alias W. R. Johnson, alias "Bill" Johnson, hereinafter sometimes called the defendant, whose full and true name other than as herein stated is unknown to the Grand Jurors, heretofore, on, to wit, the 15th day of March, 1940, at Chicago aforesaid, in the Division and District aforesaid, and within the jurisdiction of this Court, unlawfully did wilfully and knowingly attempt to defeat and evade a large part, to wit, $497,744.33 of a tax upon his net income for the calendar year 1939, which said tax was imposed by an Act of Congress approved by operation of law May 27, 1938, as amended, which Act is known as the Revenue Act of 1938, as amended, which said unlawful and willful attempt to defeat and evade said tax was by the means and in the manner following, that is to say:

(1) That the said defendant during the calendar year 1939 and at all times herein mentioned, was an individual, a citizen of the United States, who was unmarried and who had no dependents, and whose legal residence and

principal place of business were at Chicago aforesaid, within the Division and District aforesaid, and within the First United States Internal Revenue Collection District of Illinois, and who was then and there a person required by law, after the close of the said calendar year 1939,
22 and on or before March 15, 1940, to make to the Collector of Internal Revenue for said Collection District, under oath, a return for the calendar year 1939, stating specifically the items of his gross income and the deductions and credits allowed by Title I (Income Tax) of the said Act of Congress, by reason of the fact, which the said Grand Jurors upon their oaths charge to be a fact, that the regular accounting period of the defendant was on the basis of the calendar year and not on the basis of a fiscal year, and by reason of the fact, which the said Grand Jurors upon their oaths charge to be a fact, that during the said calendar year the said defendant derived and had and received a gross income amounting to more than $5,000.00, to wit, $932,571.96, derived as follows, that is to say:

Interest	$ 1,222.38
Rents and Royalties	18,239.61
Farm operating loss (Red)	23,441.46
Income from business	936,551.43
Total	$932,571.96

and that during the said calendar year the said defendant was entitled to and allowed by the provisions of Title I of said Act of Congress, deductions in the sum of, to wit, $1005.06, and no more, on account of the following:

Accounting Expense	$ 950.00
Taxes paid	55.06
Total	$1,005.06

and that he, the said defendant, had and derived and received a net income, to wit, the gross income less the
23 deductions allowed by law of, towit, $931,566.90, upon which said net income of said defendant for said calendar year an income tax of, towit, $628,174.85, under the Act of Congress aforesaid, became and were due by him, on, towit, March 15, 1940, to the United States of America, one-fourth of the amount of which at least should then and there have been paid by the said defendant to the said Collector of Internal Revenue aforesaid;

(2) That the defendant, well knowing the premises aforesaid, and being indebted to the United States of America in the amount aforesaid, by reason of the said tax imposed by the aforesaid Act of Congress, and then and there well knowing that the gross income and the net income derived and had and received by him during the said calendar year were as aforesaid, did, on, towit, March 15, 1940, at Chicago aforesaid, in the Division and judicial District aforesaid, unlawfully, wilfully and knowingly attempt to defeat and evade a large part towit, $497,744.33 of the said tax upon his said net income for the said calendar year, and as a means of so unlawfully, wilfully, and knowingly attempting to defeat and evade the said tax, did, on, towit, March 4, 1940, at Chicago aforesaid, in the Division and judicial District aforesaid, make under his oath an income tax return for said calendar year and thereafter on, to wit, March 15, 1940, did file and cause to be filed with said Collector of Internal Revenue said income tax return for the said calendar year, prepared and sworn to as aforesaid, stating specifically therein the items of his gross income for said calendar year to have been the sum of $252,720.53, and no more, derived as follows:

24	Interest	$ 1,222.38
	Income from business	256,710.00
	Rents and Royalties	18,239.61
	Farm operations loss (Red Figure)	23,441.46
	Total	$252,720.53

and stating specifically the items of deduction allowed by the Act of Congress aforesaid for said calendar year 1939 to have been the sum of $1,005.06 on account of the following:

Accounting Expense	$ 950.00
Taxes	55.06
Total	$1,005.06

and stating therein no other items of deduction, and stating specifically the net income, towit, the said gross income less the said deductions allowed by law for said calendar year to have been the sum of $251,715.47, and no more, and showing the total tax due and payable by him thereon to have been $130,430.52, and no more:

And the said defendant then and there, on, to wit, March 15, 1940, paid to the Collector of Internal Revenue for the

said Internal Revenue Collection District of Illinois, the sum of, towit, $32,607.63, and furthermore, the said defendant has never made and filed with the said Collector of Internal Revenue any other income tax return for the said calendar year, stating specifically the items of his gross income and the deductions and credits allowed by law, and has never made any other payment or payments to said
25 Collector or to any other proper officer of the United States of any sum of money on account of his said tax debt for said calendar year except the sum aforesaid:

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that heretofore, to wit, during the calendar year 1939 and up to and including March 15, 1940, and continuously thereafter up to and including the date of the filing of this indictment, in the Northern District of Illinois and within the First Internal Revenue Collection District of the United States for the State of Illinois, and within the jurisdiction of this Court, William R. Skidmore, alias W. R. Skidmore, alias Billy Skidmore; William Goldstein, alias Bill Goldstein; Andrew J. Creighton, alias A. J. Creighton, alias "Red" Creighton; Jack Sommers, alias J. Sommers; Edward Wait, alias Ed. Wait; James A. Hartigan, alias J. A. Hartigan, alias Jimmie Hartigan, alias J. A. Hart; John M. Flanagan, alias J. Flanigan; Orrie Alexander; William P. Kelly; Reginald E. Mackay, alias Reg Mackay; Stuart Solomon Brown, Bernice
26 Downey, defendants herein, well knowing all the premises aforesaid, did unlawfully, feloneously, wilfully, and knowingly aid, abet, conceal, induce and procure the defendant William R. Johnson, with aliases as aforesaid, unlawfully, feloniously, wilfully and knowingly to, attempt in the manner aforesaid to evade and defeat the income tax aforesaid, of, to wit, approximately $497,744.33 upon his, the said William R. Johnson's net income for the said calendar year 1939, by the means and in the manner aforesaid, which tax was imposed by the Act of Congress aforesaid, known as the Revenue Act of 1938, as amended;

And as a further means of so unlawfully, wilfully and knowingly attempting to evade and defeat said tax of, to wit, $497,744.33 for the said calendar year 1939, he, the said defendant, William R. Johnson, well knowing all the premises aforesaid, did conceal and cause to be concealed from any and all proper officers of the United States his gross and net incomes, and all books and records reflecting said gross and net incomes and the sources thereof;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Section 145(b) Revenue Act of 1938 (U. S. C. Title 26, Sec. 145).)

27 **Fifth Count.**

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that William R. Johnson, alias W. R. Johnson, alias Bill Johnson, William R. Skidmore, alias W. R. Skidmore, alias Billy Skidmore, William Goldstein, alias Bill Goldstein, Andrew J. Creighton, alias A. J. Creighton, alias "Red" Creighton, Jack Sommers, alias J. Sommers, Edward Wait, alias Ed Wait, James A. Hartigan, alias J. A. Hartigan, alias Jimmie Hartigan, alias J. A. Hart, John M. Flanagan, alias J. Flanagan, Orrie Alexander, William P. Kelly, alias Bill Kelly, Reginald E. McKay, alias Reg Mackay, Stuart Solomon Brown, alias S. S. Brown, and Bernice Downey, hereinafter called defendants, throughout and at various times and during the period of time extending from on or about January 1, 1936, and for a long time prior thereto, up to and including the date of the filing of this indictment,

28 in the City of Chicago, State and Northern Judicial District of Illinois, and within the jurisdiction of this Court, unlawfully, wilfully, knowingly and feloniously, did conspire, combine, confederate and agree together and with each other, and among themselves, and with divers other persons to the Grand Jurors unknown, to defraud the United States of America of income taxes which should become due from the defendant, William R. Johnson, and which did in fact become due to the United States of America from the said defendant, William R. Johnson, for the calendar years 1936, 1937, 1938 and 1939, in the aggregate amount of, to wit, approximately $1,886,144.31 which said unlawful and felonious conspiracy, combination confederation and agreement was then and there a continuing one for defrauding the United States of America of income taxes which should become due and which did in fact become due under the circumstances, by means and methods and in the manner following, that is to say:

Each and every of the allegations contained in the paragraphs designated (1) (extending to but not including

paragraph designated (a) of the first four counts of this indictment, inclusive, is hereby incorporated by reference and by such reference is hereby re-alleged in this count with the same force and effect as though in this count set forth in full.

That the said defendant, William R. Johnson, during the years 1936, 1937, 1938 and 1939, and for a long time prior thereto, was engaged in an enterprise commonly known as the gambling business and was also engaged in other enterprises incidental and related to said gambling business the true and exact nature and extent of which, except as herein stated, are to the Grand Jurors unknown:

That the said defendants, then and there well knowing and anticipating all the premises as aforesaid, in
29 order to deceive such Internal Revenue Officers and employees of the United States as should be charged with the assessment and collection of the taxes imposed upon the net income of William R. Johnson, as aforesaid, and such officers and employees of the United States as should be authorized and required to examine and audit the account books and records of the said William R. Johnson and of his gambling enterprises or businesses and with checking and verifying the income tax returns of said William R. Johnson for the certain calendar years 1936, 1937, 1938, 1939 to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of Illinois, as required by law, and in order to prepare the way for making false and fraudulent returns to the said Collector for said calendar years, showing greatly less income taxes due from the said William R. Johnson for the said calendar years, and for failing to pay to the said Collector, in accordance with such false and fraudulent returns the true and correct taxes on the net income of the said William R. Johnson, and thereby to defraud the United States of America of large parts of said true and correct income taxes would, according to said unlawful conspiracy, combination, confederation and agreement, do, among other things the following:

It was a part of the said conspiracy that the said defendants, well knowing the premises aforesaid, would conceal from any and all Internal Revenue Officers the investment participation and true ownership of the said William R. Johnson in divers gambling businesses and houses and related enterprises in and about Cook County and Chicago,

Illinois, some of the said gambling houses being commonly known as

30 The Horse-Shoe Club
The Casino Club
The Dev-Lin
The Lincoln Tavern
The Harlem Stables
The House of Niles
The D. & D. Club
The Bon-Air Casino
The Villa Moderne
The 4020 Club
The Southland Club
The Western Club
The Select Club
The Mayfair Club
The Northland Club
The Club Proviso
The 4011 Club
2135 Lake Park Club
The Harlem Club
The 11901 Vincennes Club
The 406 Club

and other gambling establishments located at, to wit,

3332 N. Milwaukee Avenue
3946 School Street
2133 S. Kedzie Boulevard
3209 W. Ogden Avenue

and divers other gambling establishments, the exact names or addresses of which are to the Grand Jurors unknown:

It was a further part of the said conspiracy that the said defendants, other than the said William R. Johnson, William R. Skidmore, William Goldstein, Stuart S. Brown, and Bernice Downey, well knowing all the premises aforesaid, would open, maintain, and operate, and would cause to be opened, maintained and operated for the financial
31 benefit of said William R. Johnson, but under names other than Johnson's, said gambling enterprises or houses last aforesaid, and would thereby conceal and cause to be concealed from any and all Internal Revenue Officers the true ownership of the said William R. Johnson thereof;

It was a further part of the said conspiracy that the said defendants would open, maintain, and operate, and would cause to be opened, maintained, and operated divers

currency exchanges, and in particular, the Lawrence Avenue Currency Exchange in the City of Chicago, for the purpose of furnishing banking facilities to the defendant Johnson and the aforesaid gambling houses, so as to enable the said defendant Johnson to conceal from any and all Internal Revenue Officers his financial interest in and net taxable income from the aforesaid gambling enterprises or houses;

It was a further part of the said conspiracy that the defendants through the aforesaid Currency Exchanges and divers other places would cause all of the profit and income from the aforesaid gambling establishments to be converted into currency in such a manner as to conceal the source, ownership and disposition thereof, and to prevent the making of any record thereof, and thereby prevent the agents and officers of the United States from establishing the true gross and net incomes derived and had from the aforesaid gambling establishments to the use and benefit of the said defendant Johnson; and would conceal and destroy any and all records of the said currency exchanges to prevent their discovery and examination by officers and agents of the United States;

It was a further part of the said conspiracy that the said defendants would acquire, maintain, and operate, and would cause to be maintained and operated, a building, in such a manner and under such circumstances as to conceal the fact that said building was the headquarters for said gambling enterprises, and in particular, the fact that said building houses the central point from which certain information relating to horse races and race tracks was transmitted by electrical device, that is to say, by telephone and teletype, to the aforesaid gambling houses;

32

And the said defendants, well knowing all the premises aforesaid, and as a further part of said conspiracy, would file and cause to be filed with the said Collector of Internal Revenue for the said First Internal Revenue Collection District of Illinois income tax returns for the said respective calendar years 1936 to 1938, both years inclusive, for the said defendant, William R. Johnson, as an individual, which said income tax returns would contain false and fraudulent statements and items pertaining to the income of the said William R. Johnson, especially to the source of income from gambling enterprizes or houses as aforesaid, and would thereby show on said returns a much less net income for each of said calendar

years than in truth and in fact the said William R. Johnson would and did have for each of said calendar years, and, thereby, a much less income tax due by the said William R. Johnson to the United States of America, as aforesaid, and specifically would file and cause to be filed income tax returns for the said William R. Johnson for each of said calendar years showing gross income, deductions, net income, the source thereof, and tax due as follows, to wit:

33 For the year 1936:

Interest on bank deposits, etc.	$ 2,111.85
Rents and royalties	16,189.03
Net income from business	145,165.70
Total gross income	$163,466.58

and stating specifically the items of deduction allowed by the said Revenue Act of 1936 for said calendar year 1936 to have been the sum of $1,573.84 on account of the following:

Interest paid	$1,500.00
Taxes paid	73.84
Total Deductions	$1,573.84

and stating therein no other items of deductions, and showing specifically the net income, to wit, the said gross income less the said deductions allowed by law for said calendar year 1936 to have been the sum of $161,892.74, and showing the total tax due and payable thereon by the said defendant William R. Johnson for the said calendar year 1936, after allowance of all credits, to have been the sum of $71,915.35 and no more;

For the year 1937:

Interest on bank deposits, etc.	$ 2,065.00
Rents and royalties	17,461.63
Income from business	255,240.70
Farm operating loss (red figure)	(26,023.41)
Total Gross Income	$248,743.92

and stating specifically the items of deduction allowed by the said Revenue Act of 1936 for said calendar year 1937 to have been the sum of $83.74 on account of the following:

Contributions	$25.00
Taxes paid	58.74
Total Deductions	$83.74

34 and stating therein no other items of deductions and showing specifically the net income, to wit, the said gross income less the said total deductions allowed by law, for said calendar year 1937, to have been the sum of $248,660.18, and showing the total tax due and payable thereon by the said defendant William R. Johnson, for said calendar year 1937, after the allowance of all credits, to have been the sum of $128,399.72, and no more; and

For the year 1938:

Interest on bank deposits, etc.	$ 1,318.90
Rents and royalties	20,328.18
Income from business	103,265.70
Farm operating loss (red figure)	(22,414.42)
Total Gross Income	$102,498.36

and stating specifically the items of deductions allowed by the said Revenue Act of 1938 for said calendar year 1938 to have been the sum of $551.68 on account of the following:

Contributions	$500.00
Taxes	51.68
Total Deductions	$551.68

and stating therein no other items of deductions and showing specifically the net income, to wit, the said gross income less the said deductions allowed by law for said calendar year 1938, to have been the sum of $101,945.68, and showing the total tax due and payable by the said defendant William R. Johnson for the said calendar year 1938, after the allowance of all credits, to have been the sum of $34,530.94, and no more;

35 For the year 1939:

Interest on bank deposits, etc.	$ 1,222.38
Rents and royalties	18,239.61
Income from business	256,710.00
Farm operating loss (red figure)	23,441.46
Total gross income	$252,720.53

and stating specifically the items of deductions allowed by the said Revenue Act of 1938 for said calendar year

1939 to have been the sum of $1005.06 on account of the following:

Taxes	$ 55.06
Accounting expenses	950.00
Total deductions	$1,005.06

and stating therein no other items of deductions and showing specifically the net income, to wit, the said gross income less the said deductions allowed by law for said calendar year 1939, to have been the sum of $251,715.47, and showing the total tax due and payable by the said defendant William R. Johnson for the said calendar year 1939, after the allowance of all credits, to have been the sum of $130,430.52, and no more;

Whereby, and by virtue of which said conspiracy, and in the manner and means aforesaid, the United States of America would be defrauded of income taxes due and to become due from the defendant William R. Johnson in the sum of, to wit, approximately $1,856,144.31;

And the Grand Jurors upon their oaths and affirmations aforesaid, do further present and charge that, in pursuance of said unlawful and felonious conspiracy, combination, confederation and agreement, and to effect the objects of the same, the said defendants, well knowing all the facts aforesaid, at Chicago and divers other places,
36 at various times during the period of time herein mentioned, did do certain acts, among others, to effectuate said conspiracy, that is to say,

Overt Acts.

1. That on, to wit, March 12, 1937, at, to wit, Chicago, Illinois, the said defendant William R. Johnson affixed his signature to his income tax return for the calendar year 1938, and did thereafter, on, to wit, March 15, 1937, file and cause to be filed said return with said Collector of Internal Revenue at Chicago, Illinois;

2. That on, to wit, March 15, 1938, at, to wit, Chicago, Illinois, the said defendant William R. Johnson affixed his signature to his income tax return for the calendar year 1937, and did thereafter, on, to wit, March 15, 1939, file and cause to be filed said return with said Collector of Internal Revenue at Chicago, Illinois;

3. That on, to wit, March 15, 1939, at, to wit, Chicago, Illinois, the said defendant William R. Johnson affixed his signature to his income tax return for the calendar year 1938, and did thereafter, on, to wit, March 15, 1939, file and cause to be filed said return with said Collector of Internal Revenue at Chicago, Illinois;

4. That on, to wit, March 15, 1940, at, to wit, Chicago, Illinois, the said defendant William R. Johnson affixed his signature to his income tax return for the calendar year 1939, and did thereafter, on, to wit, March 15, 1940, file and cause to be filed said return with said Collector of Internal Revenue at Chicago, Illinois;

37 5. That on, to wit, March 27, 1939, at, to wit, Chicago, Illinois, the said defendant William R. Johnson made a statement to certain Internal Revenue Officers, to wit, L. H. Wilson and Frank J. Clifford;

6. The said defendants Stuart S. Brown and Bernice Downey, on or about July 20, 1938, at Chicago, Illinois, commenced the operation of a currency exchange business known as The Lawrence Avenue Currency Exchange;

7. That on or about October 1, 1939 the said defendant Stuart S. Brown burned or otherwise destroyed certain records of said currency exchange business pertaining to the income, receipts, and disbursements of the aforesaid gambling business;

8. That on or about November 1, 1939, the said defendant Stuart S. Brown fled from Chicago, Illinois;

9. That on or about January 6, 1936, at Chicago, Illinois, the defendant Jack Sommers cashed certain checks at The Northern Trust Company of Chicago;

10. At divers times during the years 1935, 1936, 1937 and 1938 the defendant Jack Sommers managed and operated the Horshoe gambling casino at Chicago, Illinois;

11. At divers times during the years 1938 and 1939 the defendant Jack Sommers cashed checks at the said Lawrence Avenue Currency Exchange in Chicago, Illinois;

12. At divers times during the year 1938 and 1939 the defendant James A. Hartigan cashed checks at the said Lawrence Avenue Currency Exchange in Chicago, Illinois;

13. At divers times during the years 1938 and 1939 the said defendant William P. Kelly sent checks to the Lawrence Avenue Currency Exchange in Chicago, Illinois.

38 14. During the years 1937, 1938 and 1939, the defendant Creighton managed the Club Southland at

6245 Cottage Grove Avenue, Chicago, Illinois;

15. On or about November 15, 1939, the defendant Bernice Downey removed the books and records of the said Lawrence Avenue Currency Exchange;

16. On or about August 1, 1939, the defendant Ed Wait visited the said Lawrence Avenue Currency Exchange in Chicago, Illinois;

17. During the calendar year 1936 the defendant John M. Flanagan managed a gambling casino at 4020 Ogden Avenue, Chicago, Illinois;

18. During the month of December, 1936, the defendant John M. Flanagan cashed certain checks in the aggregate amount of $8200 at the Lawndale Currency Exchange in Chicago, Illinois;

19. On or about January 13, 1940, the defendant William Goldstein went to the Lawrence Avenue National Bank Building at 3424 Lawrence Avenue, Chicago, Illinois;

20. At divers times during the years 1938 and 1939, the defendant Andrew J. Creighton sent checks to the said Lawrence Avenue Currency Exchange;

Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

William J. Campbell,
United States Attorney.

39 Endorsed: No. 32168. United States District Court, Northern District of Illinois, Eastern Division. The United States of America *vs.* William R. Johnson, William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey. Indictment. Vio: Sec. 145 (B) Revenue Acts of 1936 and 1938 (U. S. C. Title 26, Sec. 145) (Attempting to evade and defeat income tax) and Sec. 88, Title 18 United States Code (Conspiracy).

A true bill,

Dorothy Walton Binder,
Foreman.

Filed in open court this 29th day of March, A. D. 1940.

Hoyt King,
Clerk.

Entered April 5, 1940.

40 And afterwards, to wit, on the 5th day of April, A. D. 1940, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears the following entry, to wit:

41 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

Friday, April 5, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

United States of America, *vs.* William R. Johnson, William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, Bernice Downey.	No. 32168.

This day again comes the United States by the United States Attorney come also the defendants William R. Johnson, William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan and Orrie Alexander, William P. Kelly, Stuart Solomon Brown, and Bernice Downey in their own proper person and being arraigned upon the indictment filed herein against them each defendant pleads not guilty thereto and it is

Ordered this cause be and the same is hereby continued to April 12, A. D. 1940, to be set for trial.

On motion of attorney for the defendant Reginald E. Mackay it is ordered this cause be and the same is hereby continued to April 12, A. D. 1940 for plea as to said defendant and to be set for trial.

42 And afterwards, to wit, on the 16th day of May, A. D. 1940, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit: Entered May 16, 1940.

43 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

Thursday, May 16, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This day comes the United States by the United States Attorney come also the defendants William R. Johnson, William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Stuart Solomon Brown and Bernice Downey, in their own proper persons and on motion of attorneys for the defendants William R. Johnson and William R. Skidmore it is

Ordered that leave be and the same is hereby given said defendants to withdraw their pleas of not guilty heretofore entered and leave be and the same is hereby given said defendants to file instanter motions to quash indictment and without prejudice to said motions to quash, leave to file demurrers to said indictment instanter, on motion of attorney for the defendant William Goldstein it is ordered that leave be and the same is hereby given said defendant to withdraw his plea of not guilty and to file a plea in abatement and without prejudice to said plea in abatement a demurrer to said indictment instanter and on motion of attorneys for defendants Andrew J. Creighton, Jack Sommers, Edward Wait, James E. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Stuart Solomon Brown, Reginald Mackay and Bernice Downey it is

Ordered that leave be and the same is hereby given
44 said defendants to withdraw their pleas of not guilty heretofore entered and leave be and the same is hereby given them to file pleas of the statute of limitations as to count 1 of the indictment, pleas in abatement and without prejudice to said pleas of the statute of limitations and pleas in abatement, demurrers to indictment instanter and

leave be and the same is hereby given the said defendants to file instanter briefs in support of their motions, pleas and demurrers.

Filed May 16, 1940.

45 And on, to wit, the 16th day of May, A. D. 1940, came the defendant by his attorneys and filed in the Clerk's office of said Court certain Motion to Quash Indictment in words and figures following, to wit:

46 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

MOTION OF DEFENDANT, WILLIAM R. JOHNSON, TO QUASH INDICTMENT.

I.

Now comes the defendant, William R. Johnson, by George F. Callaghan, his attorney, and moves the Court to quash the indictment, and each count thereof, for the following reasons:

A. The indictment is void in that it was returned at the March Term of this Court in the year 1940, by a Grand Jury impanelled and sworn at the December Term of said Court in the year 1939, and which Grand Jury was sitting illegally and without warrant or authority of law at said March, 1940, Term of Court, that is to say:

(a) The order of Court, entered February 28, 1940, purporting and pretending to authorize the continuance of service of said Grand Jury to and including the March, 1940, term of Court, which order is in words and figures:

"Now comes the Second December Term 1939 Grand Jury for the Northern District of Illinois, Eastern Division, by Dorothy W. Binder, Forewoman, and in open Court requests that an order be entered authorizing them,

47 the said Second December, 1939 Grand Jury, heretofore authorized to sit during the February 1940 Term of this Court, to continue to sit during the Term of Court succeeding the said February Term of Court, to-wit, the March 1940 Term of Court, to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Terms of this Court, and which said investigations cannot be finished

during the said February 1940 Term of Court; and the Court being fully advised in the premises,

"It Is Therefore Ordered That the Second December 1939 Grand Jury, now sitting in this Division and District, be, and it is hereby authorized to continue to sit during the March 1940 Term of Court for the purpose of finishing said investigations."

is void and illegal and the said Court had no power, warrant or authority of law to enter said order, in that Section 421 of Title 28, U. S. C. A., only permitted the Court to continue the service of the said Grand Jury solely to finish investigations begun by the said Grand Jury at the December 1939 Term of Court, and not finished by them at said Term.

(b) The said Section 421 does and did not permit the Court to continue the service of the said Grand Jury to finish investigation begun by them at the February 1940 term of Court, and not finished by them at said term.

(c) The petition of the Grand Jury filed on February 28, 1940, praying for an order extending and continuing the service to and including the March 1940 term of Court, which petition is in words and figures:

"Now comes the Second December Term 1939 Grand Jury for the Northern District of Illinois, Eastern Division, by Dorothy W. Binder, Forewoman, and in open Court requests that an order be entered authorizing them, the Second December 1939 Grand Jury, heretofore authorized to sit during the February 1940 Term of this Court,

to continue to sit during the Term of Court succeed-
48 ing the said February Term of Court, to-wit, the March

1940 Term of Court, to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Term of this Court, and which said investigations cannot be finished during the said February 1940 Term of said Court.

Dorothy Walton Binder,
Forewoman, Second December Term,
A. D. 1939 Grand Jury."

is void, illegal and unauthorized, so that no valid order of Court can or could be entered thereon for the reason that the said petition prayed to have its term of service continued to and including the March 1940 Term of Court for the purpose of finishing investigations begun but not finished at the February 1940 Term of Court.

B. The two orders of this Court pretending and purporting to authorize the December 1939 Term Grand Jury to sit during the February 1940 and March 1940 Terms of Court respectively, do not disclose that this indictment was the result of an investigation begun but not finished during said December 1939 Term, or that any investigation was begun but not finished during said December 1939 Term.

C. The indictment does not show that the investigations alleged to have been begun but not finished during the December 1939 Term were not completed in the December 1939 Term.

II.

And the said defendant, by his said attorney, further moves the Court to quash the fourth and fifth counts of the indictment, for the following reasons:

49 A. None of the matters therein alleged with respect to the said defendant wilfully and knowingly attempting to evade and defeat a tax upon his net income for the calendar year of 1939 were presented to the said Grand Jury at the December 1939 Term of Court, and no investigation of the said matters was begun at the December 1939 Term of Court.

B. The said matters described in the preceding paragraph were first presented to the said Grand Jury at the March 1940 Term of Court and the investigation of said matters was first begun at said March 1940 Term of Court, in violation and contravention of Section 421, Title 28, U. S. C. A.

III.

And the said defendant, by his said attorney, further moves the Court to quash the first, second and third counts of the indictment, for the following reasons:

A. On March 1, 1940, the said December 1939 Grand Jury returned an indictment against this defendant, William R. Johnson, in a case entitled United States of America *vs.* William R. Johnson, alias W. R. Johnson, alias "Bill" Johnson, which case bears criminal general #32127; that the said indictment charges the said defendant with the same crimes, matters and violations of statutes as are contained in the first, second and third counts of the instant and present indictment; that the

matters contained in the first, second and third counts of the present and instant indictment were finished and concluded at the February 1940 Term of the said Grand Jury; that the said Grand Jury had no power or authority to investigate the said matters at the March 1940 Term of said Grand Jury.

50 Wherefore, for the foregoing reasons, the defendant says that the said indictment, and each count thereof, is void and of no lawful effect to confer jurisdiction upon this Court to try this defendant, wherefore, he prays the judgment of the Court here that said indictment, and each count thereof, be quashed, and that he may have leave to depart hence without day.

(Sgd) William R. Johnson,
Defendant.

(Sgd) George F. Callaghan,
His Attorney.

State of Illinois } ss.
County of Cook }

William R. Johnson, being first duly sworn on his oath deposes and says, that he has read the foregoing Motion to Quash by him subscribed and that the allegations of fact therein contained are true.

(Sgd) William R. Johnson.

Subscribed and Sworn to before me this 15 day of May, A. D. 1940.

Kathryn G. Lanahan,
(Seal) *Notary Public.*

51 I, George F. Callaghan, do hereby certify that I am a member of the bar of the District Court of the United States for the Northern District of Illinois, Eastern Division, and that I am attorney for the said defendant above named; that I have read the indictment against the said defendant and the respective orders referred to in this Motion to Quash; that from such examination I am of the opinion that the foregoing Motion to Quash is well founded in fact and in law, and I do further certify that the said Motion to Quash is not interposed for the purpose of delay.

(Sgd) George F. Callaghan.

Filed May 16, 1940.

52 And on, to wit, the 16th day of May, A. D. 1940, came the defendants by their attorneys and filed in the Clerk's office of said Court certain Plea in Abatement in the Nature of a Motion to Quash in words and figures following, to wit:

53 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

PLEA IN ABATEMENT IN THE NATURE OF A MOTION TO QUASH, OF THE DEFENDANTS THEREIN NAMED.

Now come the defendants, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey, by their attorneys, and move the Court to quash and abate the indictment herein, and each count thereof, and as grounds therefor, state:

I.

The indictment is void in that it was returned at the March, 1940 Term of this Court by a Grand Jury empaneled and sworn at the December, 1939 Term of Court, which Grand Jury was sitting illegally and without authority of law during said March, 1940 Term, for the reasons:

(a) The order of Court entered February 28, 1940, purporting to authorize the continuance of service of said Grand Jury during the March, 1940 Term, which order is in words and figures, to-wit:

"Now comes the Second December Term 1939 Grand Jury for the Northern District of Illinois, Eastern Division, by Dorothy W. Binder, Forewoman, and in open Court requests that an order be entered authorizing them, the

54 said Second December, 1939 Grand Jury, heretofore authorized to sit during the February 1940 Term of this Court, to continue to sit during the Term of Court succeeding the said February Term of Court, to-wit, the March 1940 Term of Court, to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Terms of this

Court, and which said investigations cannot be finished during the said February 1940 Term of Court; and the Court being fully advised in the premises,

"It Is Therefore Ordered That the Second December 1939 Grand Jury, now sitting in this Division and District, be, and it is hereby authorized to continue to sit during the March 1940 Term of Court for the purpose of finishing said investigations,"

is void and illegal and was entered without authority of law in that Section 421 of Title 28, U. S. C. A., only authorized the entry of an order to continue the service of the Grand Jury solely to finish investigations begun by the said Grand Jury during the December, 1939 Term of Court, but not finished by them during said Term.

(b) The said Section 421 does not and did not authorize the Court to continue the service of said Grand Jury to finish investigations begun by them at the February, 1940 Term and not finished by them during said Term.

(c) The petition of the said Grand Jury filed February 28, 1940, pursuant to which the aforesaid order was entered purporting to continue the service of said Grand Jury including the March, 1940 Term, and which petition is in words and figures as follows, to-wit:

"Now comes the Second December Term 1939 Grand Jury for the Northern District of Illinois, Eastern Division, by Dorothy W. Binder, Forewoman, and in open Court
requests that an order be entered authorizing them,
55 the Second December 1939 Grand Jury, heretofore authorized to sit during the February 1940 Term of this Court, to continue to sit during the Term of Court succeeding the said February Term of Court, to-wit, the March 1940 Term of Court, to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Term of this Court, and which said investigations cannot be finished during the said February 1940 Term of said Court.

Dorothy Walton Binder,
Forewoman, Second December Term, A. D. 1939 Grand Jury."

is void, illegal and unauthorized, so that no valid order of Court can or could be entered thereon for the reason that said petition prayed to have its term of service continued to and including the March, 1940 Term of Court for the purpose of finishing investigations begun but not finished at the February, 1940 Term of Court.

II.

(a) The orders purporting to authorize the December, 1939 Grand Jury to sit during the February, 1940 and the March, 1940 Terms of Court respectively, do not disclose that the indictment herein was the result of any investigation begun but not finished during the December, 1939 Term, or that any investigation of a subject germane to this indictment was begun during the December, 1939 Term.

(b) The indictment does not show that investigations alleged to have begun in the December, 1939 Term of said Grand Jury were not completed during said term.

III.

And the said defendants, by their attorneys, further move the Court to quash Counts Fourth and Fifth of the indictment, for the following reasons:

56 (a) None of the matters therein alleged with respect to the said defendant wilfully and knowingly attempting to evade and defeat a tax upon his net income for the calendar year of 1939 were presented to the said Grand Jury at the December, 1939 Term of Court, and no investigations of the said matters were begun at the December, 1939 Term of Court.

(b) The said matters described in the preceding paragraph were first presented to the said Grand Jury at the March, 1940 Term of Court and the investigations of said matters were first begun at said March, 1940 Term of Court, in violation and contravention of Section 421, Title 28, U. S. C. A.

IV.

And the said defendants, by their attorneys, further move the Court to abate and quash the First, Second and Third Counts of said indictment for the following reasons:

(a) That on March 1, 1940, defendant, William R. Johnson, was indicted by said December, 1939 Grand Jury and said indictment was returned in this Court and is known as No. 32127. By the allegations thereof said William R. Johnson is charged with the same offenses respectively as those charged in the First, Second and Third Counts of this indictment, so that any investigations which said Grand Jury might have begun with respect to the alleged attempt

to evade and defeat income taxes by said William R. Johnson were completed upon the return of said indictment, which was during the February, 1940 Term of said Grand Jury, and that said Grand Jury had no further power or authority to thereafter continue such investigations.

57 Wherefore, for the foregoing reasons, the defendants herein say that said indictment, and each count thereof, is void and of no lawful effect, and pray the judgment of this Court that said indictment, and each count thereof, be abated and quashed, and these defendants have leave to depart hence without day.

Andrew J. Creighton,
Jack Sommers,
Edward Wait,
James A. Hartigan,
John M. Flanagan,
Orrie Alexander,
William P. Kelly,
Reginald E. Mackay,
Bernice Downey,
By Edward J. Hess,
Their Attorney.
Stuart Solomon Brown,
By Edw. J. Hess &
E. A. Fisher,
His Attorneys.

58 And on, to wit, the 16th day of May, A. D. 1940 came the defendants by their attorney and filed in the Clerk's office of said Court Special Plea in Bar as to Count One (Statute of Limitations) in words and figures following, to wit: Filed May 16, 1940.

59 In the District Court of the United States.

* * (Caption—32168) * *

SPECIAL PLEA IN BAR AS TO COUNT ONE (STATUTE OF LIMITATIONS).

Now come the defendants, William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey, jointly and severally by

their respective attorneys and plea specially to Count One of said indictment and say that the United States ought not to prosecute further said Count as to these defendants, or either of them, because the indictment in which said Count One is included was not found within three (3) years next after the offenses, if any, charged in said Count, are alleged to have been committed as required by the Statute of Limitations applicable to such alleged offenses; that these defendants, and each of them, were not during any of said period from and after the alleged commission of offenses charged to them, absent from the district wherein said alleged offenses were committed; that these defendants, and each of them, were not during of the period from and after the date of the alleged commission of the alleged offenses charged to them in said Count, fugitives from justice, and that no complaint has been instituted before a Commisioner of the United States charging
60 these defendants, or either of them, with the commission of the alleged offenses laid to their charge in said Count One, and this the said defendants are ready to verify.

Wherefore, the aforesaid defendants, and each of them, pray the Court to quash, dismiss and abate Count One of said indictment as to them and as to each of them.

William R. Skidmore,
By Wm. W. Smith,
His Counsel.

William Goldstein,
By Leslie E. Salter,
His Counsel.

Andrew J. Creighton,
Jack Sommers,
Edward Wait,
James A. Hartigan,
John M. Flanagan,
Orrie Alexander,
William P. Kelly,
Reginald E. Mackay,
Bernice Downey,
By Edward J. Hess,
Their Counsel.

Stuart Solomon Brown,
By Edw. J. Hess and
E. A. Fisher,
His Counsel.

63 And on, to wit, the 16th day of May, A. D. 1940 came William R. Johnson by his attorneys and filed in the Clerk's office of said Court Demurrer to Indictment in words and figures following, to wit: Filed May 16, 1940.

64 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption—32168) * *

DEMURRER OF DEFENDANT, WILLIAM R. JOHNSON, TO INDICTMENT.

Now comes the defendant, William R. Johnson, impleaded, in his own proper person, and by George F. Callaghan, his attorney, and having heard said indictment read, says, as to said indictment, and each count thereof, that the matters therein contained, in manner and form as therein set forth, are not sufficient in law, and that the defendant is not bound in law to answer the same, and this the defendant is ready to verify.

Wherefore, for want of a sufficient indictment in this behalf, the defendant prays judgment and that by the Court he may be dismissed and discharged from said premises in said indictment specified.

And for further cause of demurrer to said indictment, this defendant shows to the Court here, the following, to wit:

65 1. Each of the first four counts of the indictment is duplicitous in that several separate and distinct offenses, requiring a different kind and character of proof, are attempted to be charged therein, that is to say:

(a) It is charged or attempted to be charged in each of said counts that the defendant, William R. Johnson, did on a day certain wilfully attempt to defeat and evade a tax upon his income and each of said counts also charges or attempts to charge that said offenses were continuing offenses beginning prior to said day certain and continuing to the date of the return of the indictment.

(b) In each of said counts, the persons charged as aiders and abettors are charged with other and different offenses than the defendant charged as principal.

(c) In each of said counts, the persons charged as aiders and abettors are charged with the commission of

offenses at other and different times than the defendant charged as principal.

(d) In each of said counts, the aiders and abettors are charged with committing two substantive offenses; that of aiding and abetting the principal defendant, and with being accessories after the fact, for each of which offenses, there is a different and separate penalty.

(e) In each of said counts, this defendant is charged or attempted to be charged with a wilfull attempt to defeat and evade a tax and each of said counts also charges (1) the filing of a false income tax return (2) the wilfull failure to supply information for the purposes of the computation, assessment, or collection of any tax (3) the wilfull failure to make a return as to certain items of income.

66 2. The indictment and each count thereof does not sufficiently aver and show that the December Term 1939 Grand Jury was lawfully authorized to continue its investigation beyond said term.

3. The allegations of the counts one, two, three and four of the indictment are inconsistent and repugnant in that there is charged therein a continuing offense both prior to and beyond the period alleged as the completion of the offense charged to the principal.

4. The said indictment does not, nor does any count thereof, inform this defendant of the nature and cause of his accusation, with the certainty required by law.

5. The said indictment does not, nor does any count thereof, charge or aver the commission of acts by this defendant, constituting any offense against any statute of the United States with the certainty required by law.

6. The said indictment and each count thereof, is vague, indefinite and uncertain and, therefore, insufficient, for that the said indictment, or any count thereof, does not sufficiently aver or charge the elements or the supposed crime or offense therein attempted to be charged and it is impossible for this defendant to prepare a defense thereto.

7. The allegations of the indictment, and of each count thereof are so uncertain and indefinite that they violate the requirements of the Sixth Amendment to the Constitution of the United States of America.

8. The second, third, fourth and fifth counts fail to set forth the organization of the Grand Jury, the impanelling of the Grand Jury, venue and the term of service of the Grand Jury, and that the indictment was returned within the term of service of the said Grand Jury.

67 And the defendant says that the said indictment, for the reasons above stated, is insufficient, uncertain, and informal, and, in other particulars, void, and of no lawful effect to confer jurisdiction upon the Court to try this defendant, wherefore he prays judgment of the Court here that said indictment be quashed and that he may leave to depart hence without day.

(sgd) William R. Johnson,
Defendant.

By (sgd) George F. Callaghan,
His Attorney.

I, George F. Callaghan, do hereby certify that I am a member of the bar of the District Court of the United States for the Northern District of Illinois, Eastern Division, and that I am attorney for the said defendant above named, and that I have read the indictment against the said defendant; that from such examination I am of the opinion that the foregoing demurrer is well founded in fact and in law, and I do further certify that said demurrer is not interposed for delay.

(Sgd) George F. Callaghan.

68 And on, to wit, the 16th day of May, A. D. 1940 came the defendants by their attorneys and filed in the Clerk's office of said Court Joint and Several Demurrer to Indictment in words and figures following, to wit: Filed May 16, 1940.

69 In the District Court of the United States.
* * (Caption—32168) * *

THE JOINT AND SEVERAL DEMURRER OF DEFENDANTS ANDREW J. CREIGHTON, JACK SOMMERS, EDWARD WAIT, JAMES A. HARTIGAN, JOHN M. FLANAGAN, ORRIE ALEXANDER, WILLIAM P. KELLY, REGINALD E. MACKAY, STUART SOLOMON BROWN, AND BERNICE DOWNEY.

And now come the above-named defendants, jointly and severally by their respective counsel, and file this their demurrer to the indictment herein, and for grounds of demurrer, say:

1. The indictment, and each count thereof is vague and indefinite;

2. The indictment, and each count thereof, fails to apprise these defendants of the charges which they are called upon to meet;

3. The indictment, and each count thereof, fails to allege that the same was returned by a lawful Grand Jury;

4. The indictment purports to have been returned by a Grand Jury of this Court empaneled for the December, A. D., 1939 Term, and "having continued to sit by order of this Court • • • during the February and March Terms of said Court for the purpose of finishing investigations begun but not finished during said December Term," without alleging that the subjectmatter of the indictment herein made up any of said unfinished investigations;

5. That said indictment, and each count thereof, fails to allege the continuance of said Grand Jury by order of Court made within the December, A. D., 1939 Term thereof;

6. That said indictment, and each count thereof, fails to allege that said Grand Jury was continued to the March, 1940 Term by order of Court entered during the February, 1940 Term thereof;

70 7. That said indictment, and particularly the Second, Third, Fourth and Fifth Counts thereof, fail entirely to allege the authority by which the December, 1939, Grand Jury of this Court returned said indictment in the March, 1940 Term thereof;

8. That said indictment, and particularly the first four counts thereof, are duplicitous;

9. That Count One of said indictment in substance charges co-defendant, William R. Johnson, with having attempted to evade and defeat certain income taxes on, to-wit, March 15, 1937, and thereafter charges these demurrants with,

(a) having aided and abetted the said attempted evasion of income taxes during the calendar year of 1936 and up to and including March 15, 1937; and

(b) continuously thereafter up to and including the date of the filing of the indictment (March 29, 1940);

10. That Count Second of said indictment in substance charges co-defendant, William R. Johnson, with having attempted to evade and defeat certain income taxes on, to-wit, March 15, 1938, and thereafter charges these demurrants with,

(a) having aided and abetted the said attempted evasion

of income taxes during the calendar year of 1937 and up to and including March 15, 1938; and

(b) continuously thereafter up to and including the date of the filing of the indictment (March 29, 1940);

11. That Count Third of said indictment in substance charges co-defendant, William R. Johnson, with having attempted to evade and defeat certain income taxes on, to-wit, March 15, 1939, and thereafter charges these demurrants with,

(a) having aided and abetted the said attempted evasion of income taxes during the calendar year of 1938 and up to and including March 15, 1939; and

(b) continuously thereafter up to and including the date of the filing of the indictment (March 29, 1940);

12. That Count Fourth of said indictment in substance charges co-defendant, William R. Johnson, with having attempted to evade and defeat certain income taxes on, to-wit, March 15, 1940, and thereafter charges these demurrants with,

71 (a) having aided and abetted the said attempted evasion of income taxes during the calendar years of 1939 and up to and including March 15, 1940; and

(b) continuously thereafter up to and including the date of the filing of the indictment (March 29, 1940);

13. That said indictment, and particularly the first four counts thereof, is duplicitous in that it attempts to charge these defendants with both the aiding and abetting of an unlawful act, and as being accessories after the fact of the commission of said act, as alleged in paragraphs 9, 10, 11 and 12 hereof;

14. That said indictment, and particularly the first four counts thereof, is inconsistent and repugnant in that in each of said counts a continuing offense is sought to be charged to these defendants beyond the period in which it is alleged that the principal offense of attempting to evade and defeat income taxes was completed;

15. That said indictment, and particularly the first four counts thereof, fails to allege in what particular these defendants, or any of them, aided and abetted defendant, William R. Johnson, to attempt to evade and defeat his income taxes, or were accessories after the fact of such attempted evasion and defeat;

16. That the Fifth Count of said indictment fails to allege facts sufficient to show a continuing conspiracy as

attempted to be alleged, and, if anything, shows and charges a plurality of conspiracies;

17. The Fifth Count of said indictment contains allegations of impertinent, immaterial and scandalous matter;

And for other good and sufficient causes for demurrer appearing on the face of said indictment, and each and every count thereof, these defendants demur and pray the judgment of this Court whether they, or either of them, shall be required to plead thereto.

Andrew J. Creighton,
Jack Sommers,
Edward Wait,
James A. Hartigan,
John M. Flanagan,
Orrie Alexander,
William P. Kelly,
Reginald E. Mackay,
Bernice Downey,
By Edward J. Hess,
Their Attorney.

Stuart Solomon Brown,
By Edw. J. Hess and
E. A. Fisher.

72 Certificate.

I, Edward J. Hess, attorney for the aforesaid defendants as hereinabove indicated, Do Hereby Certify that in my opinion the aforesaid demurrer is well founded in point of law, and that the same is not interposed for purposes of delay.

Edward J. Hess.

61 And on, to wit, the 21st day of May, A. D. 1940 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court Demurrer to Special Plea in Bar as to Count One (Statute of Limitations) in words and figures following, to wit:

62 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA. Filed May 21, 1940.

* * (Caption—32168) * *

DEMURRER TO SPECIAL PLEA IN BAR AS TO COUNT ONE. (STATUTE OF LIMITATIONS.)

Comes now the plaintiff and demurs to the Special Plea in Bar as to Count One of the indictment and as grounds therefor submits that said Plea is not good as a matter of law.

Respectfully submitted,
William J. Campbell,
William J. Campbell,
per ERC
United States Attorney.

73 And on, to wit, the 21st day of May, A. D. 1940 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court Motion to Strike Pleas in Abatement in words and figures following, to wit: Filed May 21, 1940.

74 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption—32168) * *

MOTION TO STRIKE PLEAS IN ABATEMENT FILED BY THE DEFENDANTS NAMED HEREIN.

Comes now the United States of America by William J. Campbell, United States Attorney for the Northern District of Illinois, and moves the Court to strike the Pleas in Abatement filed herein by the defendants, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey, to the above numbered indictment, for that:

1. The Pleas, and each of them, do not state facts sufficient to constitute a plea in abatement;

2. The Pleas, and each of them, allege on knowledge facts which the Court will take judicial notice the defend-

ants cannot know and fail to state the sources of information upon which the allegations are founded;

75 3. The Pleas, and each of them, do not state facts sufficient to establish that the defendants, or any of them, are prejudiced by the alleged errors;

4. The Pleas, and each of them, attempt to contradict the respective records, applicable to the above-numbered indictment;

5. The Pleas, and each of them, are insufficient in law;

6. The Pleas, and each of them, are not well taken under the law as made and provided herein.

(Sgd) William G. Campbell,
William G. Campbell,
United States Attorney.

May 21, 1940.

Filed May 29, 1940.

76 And on, to wit, the 29th day of May A. D. 1940 came the defendants by their attorneys and filed in the Clerk's office of said Court Motion for Rule on Government to Reply in words and figures following, to wit:

77 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—32168) • •

MOTION OF DEFENDANTS FOR RULE ON GOVERNMENT TO REPLY TO DEFENDANTS' PLEAS AND MOTIONS.

Now come the defendants, William R. Skidmore, William R. Johnson, William Goldstein, Andred J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey, by their several and respective counsel, and move the court to require the "United States of America" to answer or reply to the Pleas in abatement and Motions to Quash the indictment heretofore filed by said defendants and each of them, within a short day to be fixed by the court.

(Signed) George F. Callaghan,
(Signed) Wm. W. Smith,
(Signed) Edward J. Hess,
(Signed) Leslie E. Salter,
(Signed) Edward Fisher,
Attorneys for said Defendants.

78 And afterwards, to wit, on the 29th day of May A. D. 1940, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit: Entered May 29, 1940.

79 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption 32168) * *

Wednesday, May 29, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This day comes the United States by the United States Attorney come also the defendants by their attorneys and it is

Ordered by the Court that the motion of all defendants for a rule upon the Government to answer or reply to the pleas in abatement and motions to quash heretofore filed by said defendants and to each of them be and the same are hereby denied to which ruling of the Court the defendants by their attorneys duly except and it is ordered by the Court the motion of William R. Johnson to quash the indictment be and the same is hereby overruled and denied to which ruling of the Court the defendant by his attorney duly excepts and it is ordered the demurrer of said defendant to the indictment be and the same is hereby overruled to which ruling of the Court the defendant by his attorney duly excepts and it is ordered by the Court the motion of the defendant William R. Skidmore to quash the indictment be and the same is hereby overruled and denied to which ruling of the Court the defendant by his attorney duly excepts and it is ordered the demurrer of the defendant William R. Skidmore to the indictment be and the same is hereby overruled to which ruling of the Court the defendant by his attorney duly excepts it is further ordered the Government's motion to strike plea in abatement filed by defendant William Goldstein be and the same is here-

80 by granted to which ruling of the Court the defendant by his attorney duly excepts and it is ordered demurrer of said defendant to the indictment be and the same is hereby overruled to which ruling of the Court the defendant by his attorney duly excepts it is further

ordered the motion of the Government to strike pleas in abatement in the nature of a motion to quash filed by the defendants Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey be and the same are hereby granted to which ruling of the Court the said defendants by their attorneys duly except

It is further ordered the joint and several demurrers of the defendants Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey be and the same are hereby overruled to which ruling of the Court the defendants by their attorneys duly except it is further ordered the demurrer of the Government to the special pleas in bar as to count 1 filed by the said defendants be and the same is hereby sustained to which ruling of the Court the defendants by their attorneys duly except and thirty days time from this date is allowed the defendants within which to file bills of exceptions herein it is ordered this cause be and the same is hereby set for plea and arraignment June 4, A. D. 1940.

Entered June 4, 1940.

81 And afterwards, to wit, on the 4th day of June A. D. 1940, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

82 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

Tuesday June 4, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This day comes the United States by the United States Attorney come also the defendants William R. Johnson, William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey in their own proper persons and being

arraigned upon the indictment filed herein against them each defendant pleads not guilty thereto and it is ordered that defendants file any motions which they may desire to file together with memoranda of authorities in support of said motions on or before June 12, A. D. 1940 and that Government file its briefs in opposition to said motions by June 15, A. D. 1940 12 o'clock noon and hearing on said motions set for June 17, A. D. 1940—10 A. M.

83 And on, to wit, the 12th day of June A. D. 1940 came the defendants by their attorneys and filed in the Clerk's office of said Court Motions for Bill of Particulars in words and figures following, to wit: Filed June 12, 1940.

84 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption—32168) * *

MOTION FOR BILL OF PARTICULARS.

Now comes the defendant, William R. Johnson, by George F. Callaghan, his attorney, and without waiving any of his rights to the exceptions taken to the legal sufficiency and the form of the indictment, and expressly saving and reserving unto himself all said rights, and moves the Court for an order requiring the United States of America to furnish to this defendant a bill of particulars respecting the allegations and charges against this defendant wherewith he is charged in the indictment aforesaid with respect to the matters and things hereinafter more particularly set forth.

Your petitioner shows that he is not advised, is not aware of, and is wholly unable by reason of the vagueness and indefiniteness and the lack of information of the charges laid against him in said indictment, to prepare and defend himself against said indictment and each count thereof, and that unless he be apprised by a bill of particulars of the allegations and charges against him in apt time prior to the trial of said cause, he will suffer irreparable harm and injury, will be subjected to and
85 surprised by evidence sought to be introduced by the United States of America upon the trial of said cause, and will be unable to meet or cope with unex-

pected evidence. The defendant, therefore, files this petition for a bill of particulars as to the following matters alleged in the indictment:

1. State the particulars and an itemization as to the source, time of receipt and amount of all moneys derived, had and received by the defendant Johnson, comprising the figures and amounts charged to be the gross income of the defendant Johnson in each of the counts of the indictment.

2. State the particulars and an itemization as to the source, time of receipt and amount of all moneys derived, had and received by the defendant Johnson, comprising the figures and amounts charged to be the net income of the defendant Johnson in each of the counts of the indictment.

3. State the source and amounts and time of receipt of the item described as "income from business" in each of the first four counts of the indictment.

4. State the source and amounts and time of receipt of the item described as "rents and royalties" in each of the first four counts of the indictment.

5. From what officers of the United States did the defendant Johnson conceal and cause to be concealed his gross and net incomes and the sources thereof, as charged in each count of the indictment?

6. What books and records of the defendant Johnson were concealed and caused to be concealed, as charged in the indictment, and from whom were such books and records concealed?

86 7. State the particulars of the manner and means by which the defendant Johnson was aided and abetted by the other defendants named in the commission of the offenses alleged in the first four counts of the indictment.

8. State the act or acts and the time and place of the commission of any and all acts of the defendants other than the defendant Johnson which constituted the aiding and abetting in the commission of the offenses alleged in the first four counts of the indictment.

9. State whether any means other than those alleged were employed in the commission of the offenses alleged in the first four counts of the indictment.

10. When and where was the conspiracy charged in the fifth count entered into by the defendant Johnson and who were the then members of that conspiracy?

11. State the time when each of the defendants named entered into the alleged conspiracy?

12. What Overt Acts, if any, did the defendant Johnson commit in order to effect the object of the conspiracy charged, together with the dates, the time and place of each act or acts so committed?

13. What is meant and intended by the term "true ownership" as stated in the fifth count of the indictment?

14. Which of the defendants is it intended to be charged "opened and maintained" divers Currency Exchanges as set forth in the fifth count of the indictment?

87 15. Which of the defendants did "acquire, maintain and operate a building as the headquarters for said gambling enterprises" as alleged in the fifth count of the indictment?

Your petitioner further represents that he cannot receive a fair and impartial trial and cannot prepare and submit defenses to each and all of the charges against him unless he is furnished with the information requested in this petition and that he has no means of obtaining such information or any of such information requested in this petition except through and by means of a bill of particulars.

Your petitioner further alleges that unless the prosecution is directed to furnish the particulars specified in this petition, there will be no means available now or hereafter to identify the offenses charged in the indictment and each count thereof and, for want of such means said indictment furnishes no protection to your petitioner against other and further indictments for the same alleged offenses, nor can any verdict entered upon said indictment be pleaded in bar of further prosecutions for the same alleged offenses.

Wherefore, your petitioner prays that an order be entered upon the United States Attorney to furnish your petitioner, within a reasonable time to be fixed by the Court, with a bill of particulars of all and every of the matters alleged in said indictment and more specifically of all and every of the matters and things specified
88 and requested in this petition or for such relief as to the Court shall seem meet and just.

(Sgd.) William R. Johnson,
Defendant.

(Sgd.) George F. Callaghan,
Attorney for Defendant.

89 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—32168) • •

MOTION FOR BILL OF PARTICULARS.

And now come the defendants, William R. Skidmore, in his own proper person and by his counsel, William W. Smith; William Goldstein, in his own proper person and by his counsel, Leslie E. Salter; Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay and Bernice Downey, each in his and her own proper person and by their counsel, Edward J. Hess; and Stuart Soloman Brown, in his own proper person and by his counsel Edward J. Hess and Edward A. Fisher, and respectfully move the court for an order to be entered of record in this cause, requiring the United States of America to file in said cause and to furnish to defendants and each of them a bill of particulars respecting the allegations and charges against said defendants, and each of them, wherewith they and each of them are charged in the indictment aforesaid with respect to the matters and things herein more particularly set forth:

90 For the reason that the said defendants, and each of them, are not advised, are unaware of, and are wholly unable, by reason of the vagueness and indefiniteness, and their lack of information of the charges laid against them in said indictment, to prepare and defend themselves against said indictment or the allegations and charges therein laid against them and each of them; and unless they and each of them be apprized by a bill of particulars of the allegations and charges against them in apt time prior to the trial of said cause, said defendants and each of them will suffer irreparable harm and injury, will be subjected to, and surprised by, evidence sought to be introduced by the United States of America upon the trial of said cause, and will be unable to meet or cope with unexpected evidence. Defendants respectfully call the court's attention to the following:

Count One.

(1) Paragraph 2 on page 3 of said indictment (in referring to the defendant William R. Johnson with whom these defendants are impleaded), among other things alleges:

"did on, to wit, March 15, 1937, at Chicago aforesaid, in the division and judicial district aforesaid, unlawfully, wilfully and knowingly attempt to defeat and evade a large part, to wit, $313,401.32 of the said tax upon his said net income for the said calendar year, and as a means of so unlawfully, wilfully and knowingly attempting to defeat and evade the said tax did, on, to wit, March 12, 1937, at Chicago aforesaid, in the division and judicial district aforesaid, make under his oath an income tax return for said calendar year and thereafter on to wit, March 15, 1937, did file and cause to be filed with said Collector of Internal Revenue said income tax return for the said calendar year, * * *"

meaning and intending thereby that the defendant
91 Johnson, as principal, unlawfully did the things referred to therein.

(2) In paragraph 2 on page 5 of said indictment, it is charged, among other things, in substance that defendant William R. Johnson, with respect to attempting to evade and defeat his income taxes for the calendar year 1936:

"did conceal and cause to be concealed from any and all proper officers of the United States, his gross and net incomes aforesaid, and the sources of said gross and net incomes, and all books and records reflecting said gross and net incomes and the sources thereof."

(3) And in paragraph 3 on page 5, it is charged in said indictment that William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Soloman Brown, and Bernice Downey, defendants herein,

"well knowing all the premises, did unlawfully, feloniously, wilfully and knowingly, aid, abet, 'conceal,' induce and procure the said defendant, William R. Johnson, unlawfully, feloniously, wilfully, and knowingly to attempt in the manner aforesaid to evade and defeat the income tax aforesaid of, to wit, approximately $313,401.32, upon his, the said

William R. Johnson's, net income for the calendar year 1936, by the means and in the manner aforesaid * * *."

As to said allegations defendants and each of them respectfully request that the United States of America be ordered and directed to file in this cause and furnish said defendants and each of them:

(a) With the particulars of the manner, means, and/or connection by which the said William R. Johnson was aided, abetted, "concealed," induced or procured to do, or attempts to do, the matters and things set forth in said
92 allegations.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

(b) It is requested that the United States of America be compelled to particularize by what act or acts, and at what time or times, and at what place or places, did defendants, or any or either of them, aid, abet, "conceal," induce or procure defendant Johnson to do and perform the alleged unlawful means set forth in the indictment.

Said particulars are requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

(c) It is requested that the United States of America be compelled to state whether or not any other means were employed by the defendant William R. Johnson to effect or bring about the alleged attempt to defeat and evade income taxes as charged in count one of said indictment, and if so, state what those means were and in what man-
93 ner, means and/or connection the said Johnson was aided abetted, "concealed," induced or procured to do, or attempt to do, the things set forth in said alleged means.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Soloman Brown, and Bernice Downey.

(d) If it be disclosed by the United States of America that other means were employed, particulars are respectfully requested as to what act, or acts, and at what time or times, and at what place or places, did defendants aid, abet, "conceal," induce or procure defendant Johnson to do and perform the alleged means.

Particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Soloman Brown, and Bernice Downey.

94 Count Two.

(1) Paragraph 2 on page 9 of said indictment (in referring to the defendant William R. Johnson with whom these defendants are impleaded), among other things alleges:

"did, on, to wit, March 15, 1938, at Chicago aforesaid, in the division and judicial district aforesaid, unlawfully, wilfully and knowingly attempt to defeat and evade a large part, to wit, $460,234.59 of the said tax upon his said net income for the said calendar year, and as a means of so unlawfully, wilfully and knowingly attempting to defeat and evade the said tax, did, on, to wit, March 14, 1938, at Chicago aforesaid, in the division and judicial district aforesaid, make under his oath an income tax return for said calendar year, and thereafter, on, to wit, March 15, 1938, did file and cause to be filed with said Collector of Internal Revenue said income tax return for the calendar year, * * *"

meaning and intending thereby that the defendant Johnson, as principal, unlawfully did the things referred to therein.

(2) In paragraph 1 on page 11 of said indictment, it is charged, among other things, in substance that defendant William R. Johnson, with respect to attempting to evade and defeat his income taxes for the calendar year 1937:

"did conceal and cause to be concealed from any and all proper officers of the United States his gross and net incomes aforesaid, and the sources of said gross and net incomes, and all books and records reflecting said gross and net incomes and the sources thereof."

(3) And in paragraph 2 and page 11, and paragraph 1

on page 12, it is charged in said indictment that William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Soloman Brown, and Bernice Downey, defendants herein,

"well knowing all the premises aforesaid, did unlawfully, feloniously, wilfully and knowingly aid, abet, 'conceal,'
95 induce, and procure the defendant William R. Johnson, unlawfully, feloniously, wilfully and knowingly to attempt in the manner aforesaid to evade and defeat the income tax aforesaid, of, to wit, approximately $40,234.59 upon his, the said William R. Johnson's net income for the said calendar year 1937, by the means and in the manner aforesaid * * *."

As to said allegations defendants and each of them respectfully request that the United States of America be ordered and directed to file in this cause and furnish said defendants and each of them:

(a) With the particulars of the manner, means and/or connection by which the said William R. Johnson was aided, abetted, "concealed," induced or procured to do, or to attempt to do, the matters and things set forth in said allegations.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

(b) It is requested that the United States of America be compelled to particularize by what act or acts, and at what time or times, and at what place or places, did defendants, or any or either of them, aid, abet, "conceal," induce or procure defendant Johnson to do and perform the alleged unlawful means set forth in the indictment.

Said particulars are requested as to each of the fol-
96 lowing defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

(c) It is requested that the United States of America be compelled to state whether or not any other means were employed by the defendant William R. Johnson to effect

or bring about the alleged attempt to defeat and evade income taxes as charged in count two of said indictment, and, if so, state what those means were and in what manner, means and/or connection the said Johnson was aided, abetted, "concealed," induced or procured to do, or attempt to do, the things set forth in said alleged means.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Soloman Brown, and Bernice Downey.

(d) If it be disclosed by the United States of America that other means were employed, particulars are respectfully requested as to what act, or acts, and at what time or times, and at what place or places, did defendants aid, abet, "conceal," induce or procure defendant Johnson to do and perform the alleged means.

97 Particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Soloman Brown, and Bernice Downey.

Count Three.

(1) Paragraph 2 on page 15 of said indictment (in referring to the defendant William R. Johnson with whom these defendants are impleaded), among other things alleges:

"did, on, to wit, March 15, 1939, at Chicago aforesaid, in the division and judicial district aforesaid, unlawfully, wilfully and knowingly attempt to defeat and evade a large part, to wit, $614,764.07 of the said tax upon his said net income for the said calendar year, and as a means of so unlawfully, wilfully, and knowingly attempting to defeat and evade the said tax, did, on, to wit, March 4th, 1939, at Chicago aforesaid, in the division and judicial district aforesaid, make under his oath an income tax return for said calendar year, and thereafter, on, to wit, March 15, 1939, did file and cause to be filed with said Collector of Internal Revenue said income tax return for the said calendar year * * *",

meaning and intending thereby that the defendant John-

son, as principal, unlawfully did the things referred to therein.

(2) In paragraph 1 on page 17 of said indictment, it is charged in said indictment that William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Soloman Brown, and Bernice Downey, defendants herein,

98 "well knowing all the premises a foresaid, did unlawfully, feloniously, wilfully, and knowingly aid, abet, 'conceal,' induce, and procure the defendant William R. Johnson, unlawfully, feloniously, wilfully, and knowingly to attempt in the manner aforesaid to evade and defeat the income tax aforesaid of, to wit, approximately $614,-764.07 upon his, the said William R. Johnson's net income for the said calendar year 1938, by the means and in the manner aforesaid * * *".

As to said allegations defendants and each of them respectfully request that the United States of America be ordered and directed to file in this cause and furnish said defendants and each of them:

(a) With the particulars of the manner, means and/or connection by which the said William R. Johnson was aided, abetted, "concealed," induced or procured to do, or to attempt to do, the matters and things set forth in said allegations.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Soloman Brown, and Bernice Downey.

(b) It is requested that the United States of America be compelled to particularize by what act or acts, and at what time or times, and at what places or place, did defendants, or any or either of them, aid, abet, "conceal," induce or procure defendant Johnson to do and perform the alleged unlawful means set forth in the indictment.

Said particulars are requested as to each of the fol-

99 lowing defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Soloman Brown, and Bernice Downey.

(c) It is requested that the United States of America be compelled to state whether or not any other means were employed by the defendant William R. Johnson to effect or bring about the alleged attempt to defeat and evade income taxes as charged in count three of said indictment, and, if so, state what those means were and in what manner, means and/or connection the said Johnson was aided, abetted, "concealed," induced or procured to do, or attempt to do, the things set forth in said alleged means.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

(d) If it be disclosed by the United States of A nerica that other means were employed, particulars are respectfully requested as to what act, or acts, and at what time or times, and at what place or places, did defendants aid, abet, "conceal," induce or procure defendant Johnson to do and perform the alleged means.

100 Particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

Count Four.

(1) Paragraph 2 on page 21 of said indictment (in referring to the defendant William R. Johnson with whom these defendants are impleaded), among other things alleges:

"did, on, to wit, March 15, 1940, at Chicago aforesaid, in the division and judicial district aforesaid, unlawfully, wilfully and knowingly attempt to defeat and evade a large part, to wit, $497,744.33 of the said tax upon his said net income for the said calendar year, and as a means of so unlawfully, wilfully, and knowingly attempting to defeat and evade the said tax, did, on, to wit, March 4, 1940, at Chicago aforesaid, in the division and judicial district aforesaid, make under his oath an income tax return for said calendar year and thereafter, on, to wit, March 15, 1940, did file and cause to be filed with said Collector of

Internal Revenue said income tax return for the said calendar year * * *"

meaning and intending thereby that the defendant Johnson, as principal, unlawfully did the things referred to therein.

(2) In paragraph 1 on page 24 of said indictment, it is charged in said indictment that William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. McKay, Stuart Solomon Brown, and Bernice Downey, defendants herein *

101 "well knowing all the premises aforesaid, did unlawfully, feloniously, wilfully and knowingly aid, abet, "conceal," induce, and procure the defendant William R. Johnson, with aliases as aforesaid, unlawfully, feloniously, wilfully and knowingly to attempt in the manner aforesaid to evade and defeat the income tax aforesaid of, to wit, approximately $497,744.33 upon his, the said William R. Johnson's net income for the said calendar year 1939, by the means and in the manner aforesaid * * *"

As to said allegations defendants and each of them respectfully request that the United States of America be ordered and directed to file in this cause and furnish said defendants and each of them:

(a) With the particulars of the manner, means and/or connection by which the said William R. Johnson was aided, abetted, "concealed," induced or procured to do, or to attempt to do, the matters and things set forth in said allegations.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, and Stuart Solomon Brown, and Bernice Downey.

(b) It is requested that the United States of America be compelled to particularize by what act or acts, and at what time or times, and at what place or places, did defendants, or any or either of them, aid, abet, "conceal," induce or procure defendant Johnson to do and perform the alleged unlawful means set forth in the indictment.

Said particulars are requested as to each of the fol-

102 lowing defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie

Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

(c) It is requested that the United States of America be compelled to state whether or not any other means were employed by the defendant William R. Johnson to effect or bring about the alleged attempt to defeat and evade income taxes as charged in count four of said indictment, and, if so, state what those means were and in what manner, means and/or connection the said Johnson was aided, abetted, "concealed," induced or procured to do, or attempt to do, the things set forth in said alleged means.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

(d) If it be disclosed by the United States of America that other means were employed, particulars are respectfully requested as to what act, or acts, and at what time or times, and at what place or places, did defendants aid, abet, "conceal," induce or procure defendant Johnson to do and perform the alleged means.

103 Particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

Count Five.

This count charges all of the defendants named in the caption hereof with an alleged continuing conspiracy to attempt to evade the payment of the income tax due the United States from the defendant William R. Johnson during the years 1936, 1937, 1938 and 1939 in the approximate amount of one million eight hundred eighty-six thousand one hundred forty-four dollars and thirty-one cents ($1,886,144.31).

It charges that the defendants as a part of said conspiracy would open, maintain and operate, or cause to be opened, maintained and operated for the financial benefit of William R. Johnson certain gambling places or houses under names other than Johnson's, thereby concealing and

causing to be concealed from the Internal Revenue officers the true ownership of the alleged gambling houses and relative enterprises.

Said count further charges as a part of said conspiracy that for the purpose of furnishing banking facilities to the defendant Johnson, certain currency exchanges, particularly one at Lawrence avenue in the city of Chicago, was opened, maintained and operated.

104 Said count at page 38 thereof then alleges that the defendants, other than William R. Johnson, William R. Skidmore, William Goldstein, Stuart Solomon Brown and Bernice Downey, would open, maintain, operate and would cause to be opened, maintained and operated for the financial benefit of William R. Johnson, but under names other than Johnson's, the same gambling houses previously referred to, to wit: the gambling houses set forth at page 28 of the indictment.

Said count then alleges that said defendants would open, maintain and operate diverse currency exchanges, particularly one on Lawrence avenue, in the city of Chicago, for the purpose of furnishing banking facilities to the defendant Johnson and the aforesaid gambling houses.

Defendants respectfully ask that the government be required to particularize and designate which of the defendants are referred to.

(a) It is requested that the United States of America be compelled to state whether it refers to all of the defendants, or whether it refers to all defendants other than William R. Johnson, William R. Skidmore, William Goldstein, Stuart Solomon Brown and Bernice Downey, when it says at page 29 of said count in said indictment, in effect, that said defendants allegedly opened currency exchanges.

Particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

105 (b) In the fifth count of said indictment, beginning at page 34, twenty overt acts are charged, none of which are alleged to have been done or participated in nor do they appear to be connected with defendants William R. Skidmore, Alexander, or Mackay. Counsel for said three last named defendants respectfully ask that the

United States be ordered and directed to furnish particulars, if any they have, as to the time and place and circumstances, if any, as to the alleged participation of Messrs. Skidmore, Alexander and Mackay with said alleged overt acts.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, Orrie Alexander, Reginald E. Mackay.

(c) It is requested that the United States of America be compelled to state whether or not said William R. Skidmore, Orrie Alexander and Reginald E. Mackay were or are implicated or connected with the said alleged overt acts.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, Orrie Alexander, Reginald E. Mackay.

106 Wherefore, the aforesaid defendants, and each of them, respectfully pray and move the court for an order directing the United States of America to file in this cause and to furnish them such further particulars in reference to the aforesaid indictment as to the court may seem meet and proper under the circumstances presented in this motion and the memoranda, points and authorities submitted therewith.

William R. Skidmore,
By Wm. J. Smith,
His counsel.

William Goldstein,
By: Leslie E. Salter,
His counsel.

Andrew J. Creighton,
Jack Sommers,
Edward Wait,
James A. Hartigan,
John M. Flanagan,
Orrie Alexander,
William P. Kelly,
Reginald E. Mackay,
Bernice Downey,
By: Edward J. Hess,
Their counsel.

Stuart Solomon Brown,
By: Edward J. Hess,
Edward A. Fisher,
His counsel.

Entered June 17, 1940.

107 And afterwards, to wit, on the 17th day of June, A. D. 1940, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears the following entry, to wit:

108 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

ORDER.

This cause coming on to be heard upon the petitions of each of the defendants herein for an order upon the United States Attorney to furnish said defendants with bills of particulars as specified in said petitions, and the Court having considered said petitions and the various questions therein set forth, and having heard the arguments of counsel thereon:

It Is Therefore Ordered that William J. Campbell, United States Attorney, be and he is hereby directed to furnish bills of particulars to the defendants, as follows:

A. As to defendant, William R. Johnson:

1. An itemization as to the source, time of receipt and the amount of money derived, had and received by the defendant, William R. Johnson, comprising the figures and amounts stated to be the gross income of the defendant, William R. Johnson, in Counts 1, 2, 3 and 4 of the indictment, to wit:

$607,399.48 as set forth in Count 1 of the indictment.
$880,949.94 as set forth in Count 2 of the indictment.
$959,908.23 as set forth in Count 3 of the indictment.
$932,571.96 as set forth in Count 4 of the indictment.

109 2. An itemization and description as to what books and records of the defendant, William R. Johnson, were concealed and caused to be concealed, as charged in Counts 1, 2, 3 and 4 of the indictment.

B. As to defendants,

William R. Skidmore
William Goldstein
Andrew J. Creighton

Jack Sommers
Edward Wait
James A. Hartigan
John M. Flanagan
William P. Kelly
Reginald E. Mackay
Stuart Solomon Brown
Bernice Downey

1. A particularization of the act or acts, and at what time or times, and in what place or places, the aforesaid defendants, or either of them, aided, abetted, counselled, induced and procured the defendant, William R. Johnson, to do and perform the alleged unlawful offenses described in Counts 1, 2, 3 and 4, respectively, of the indictment.

It Is Further Ordered, that the above bill of particulars be filed within 21 days from June 17, 1940.

It Is Further Ordered, that all other requests for particulars as contained in the petitions of the defendants be, and the same are hereby denied, to which ruling of the Court an exception is allowed each defendant.

(Sgd.) Barnes,
United States District Judge.

Enter: June 17, 1940.

110 And on, to wit, the 3rd day of July, A. D. 1940, came the United States by its attorneys and filed in the Clerk's office of said Court Bill of Particulars in words and figures following, to wit: Filed July 3, 1940.

111 In the District Court of the United States of America.

• • (Caption—32168) • •

BILL OF PARTICULARS.

Comes now the United States of America, by William J. Campbell, United States Attorney for the Northern District of Illinois, and pursuant to the Order of this Court so to do, furnishes to the defendants the following information:

Part I

To Defendant William R. Johnson:

Count One of Indictment

Year 1936

Gross Income Alleged:		$607,399.48
Itemization:		
1.	Interest as reported on income tax return of defendant Johnson	2,111.85
2.	Rent as reported on same return	16,189.03
3.	From checks cashed at the Northern Trust Company, Chicago, during January to May, inclusive, 1936, by defendant Jack Sommers	111,578.60
112 4.	From currency exchange at the Northern Trust Company, Chicago and Albany Park Deposit and Exchange Company, Chicago, all during the year 1936, by defendant Jack Sommers and one Downey	148,400.00
5.	From checks cashed at Albany Park Deposit and Exchange Company, Chicago, all during June to December, inclusive, 1936, by defendant Jack Sommers and one Downey	255,401.40
6.	From checks cashed and deposits made at the Mid-City National Bank of Chicago and the I. C. State Bank of Chicago, all during the year 1936, by defendant Andrew J. Creighton and one William Foley and one Fred Gitzen	57,520.00
7.	From checks cashed at the Lawndale Currency Exchange all during the year 1936, by defendant John M. Flanagan, and one Albert Couch	16,198.60
	Total	$607,399.48

The source of the above items from 3 to 7, inclusive, is gains or profits derived, had, and received by the de-

fendant William R. Johnson during the calendar year 1936 from the operation of a gambling business in the following gambling establishments:

The Horse-Shoe Club
The Casino Club
The Dev-Lin
The Lincoln Tavern
The Harlem Stables
The House of Niles
The D. & D. Club
The Bon-Air Casino
The Villa Moderne
The 4020 Club
The Southland Club
The Western Club
113 The Select Club
The Mayfair Club
The Northland Club
The Club Proviso
The 4011 Club
2135 Pulaski Road
The Lake Park Club
The Harlem Club
The 11901 Vincennes Club
The 406 Club

114 **Part II**

To Defendant William R. Johnson:

Count Two of Indictment

Year 1937

Gross Income Alleged:	$880,949.94
Itemization:	
1. Interest as reported on income tax return of defendant Johnson	2,065.00
2. Rent as reported on same return	17,461.63
3. Loss from operation of farm as reported on same return—Red Figure—	(26,023.41)
4. From checks cashed by defendant Jack Sommers at the Albany Park Deposit and Exchange from January to August, inclusive, 1937	623,690.56
5. From checks cashed and deposits made at the Mid-City National Bank of Chicago and the I. C. State Bank of Chicago, from January 1 to August 31, inclusive, 1937, by defendant Andrew J. Creighton and one William Foley and one Fred Gitzen	209,406.16
6. From currency exchanged by defendant Jack Sommers at the Northern Trust Company, and the Albany Park Deposit and Exchange during January to August, inclusive, 1937, and at the Mid-City National Bank of Chicago, by Andrew J. Creighton, from January to August, inclusive, 1937	54,350.00
Total	$880,949.94

The source of the above items 4 to 6, inclusive, is gains or profits derived, had, and received by the defendant

William R. Johnson during the calendar year 1937 from the operation of a gambling business in the following
115 gambling establishments:

The Horse-Shoe Club
The Casino Club
The Dev-Lin
The Lincoln Tavern
The Harlem Stables
The House of Niles
The D. & D. Club
The Bon-Air Casino
The Villa Moderne
The 4020 Club
The Southland Club
The Western Club
The Select Club
The Mayfair Club
The Northland Club
The Club Proviso
The 4011 Club
2135 Pulaski Road
The Lake Park Club
The Harlem Club
The 11901 Vincennes Club
The 406 Club

116 **Part III.**

To Defendant William R. Johnson:

Count Three of Indictment

Year 1938

Gross Income Alleged:	$959,908.28
Itemization:	
1. Interest as reported on income tax return of defendant Johnson	1,318.90
2. Rents as reported on same return	20,328.18
3. Loss from operation of farm as reported on same return—Red Figure—	(22,414.42)
4. From checks cashed by defendant Jack Sommers at the Albany Park Deposit and Exchange during February 1 to July 20, inclusive, 1938	376,783.14
5. From checks cashed by defendant Jack Sommers at the Lawrence Avenue Currency Exchange during July 21 to December 31, inclusive, 1938	194,557.53
6. From checks cashed and deposits made at the Mid-City National Bank of Chicago and the I. C. State Bank of Chicago, from March 1 to December 31, inclusive, 1938, by defendant Andrew J. Creighton and one William Foley and one Fred Gitzen	139,334.95
7. From currency exchanged by the defendant Jack Sommers at the Albany Park Deposit and Exchange, Lawrence Avenue Currency Exchange, and Northern Trust Company, and by Andrew J. Creighton at the Mid-City National Bank, all during the year 1938	250,000.00
Total	$950,908.28

The source of the above items 4 to 7, inclusive, is gains or profits derived, had, and received by the defendant

William R. Johnson during the calendar year 1938
117 from the operation of a gambling business in the following gambling establishments:

The Horse-Shoe Club
The Casino Club
The Dev-Lin
The Lincoln Tavern
The Harlem Stables
The House of Niles
The D. & D. Club
The Bon-Air Casino
The Villa Moderne
The 4020 Club
The Southland Club
The Western Club
The Select Club
The Mayfair Club
The Northland Club
The Club Proviso
The 4011 Club
2135 Pulaski Road
The Lake Park Club
The Harlem Club
The 11901 Vincennes Club
The 406 Club

118 **Part IV**

To Defendant William R. Johnson:

Count Four of Indictment

Year 1939

Gross Income Alleged:	**$932,571.96**
Itemization:	
1. Interest as reported on income tax return of defendant Johnson	1,222.36
2. Rents as reported on same return	18,239.61
3. Loss from operation of farm as reported on same return—Red Figure—	23,441.46
4. From checks cashed and currency exchanged by defendant Jack Sommers at the Lawrence Avenue Currency Exchange and the Northern Trust Company from January 1 to September 30, inclusive, 1939	936,551.43
Total	**$932,571.96**

The source of the above item No. 4 is gains or profits derived, had, and received by the defendant William R. Johnson during the calendar year 1939 from the operation of a gambling business in the following gambling establishments:

The Horse-Shoe Club
The Casino Club
The Dev-Lin Club
The Lincoln Tavern
The Harlem Stables
The House of Niles
The D. & D. Club
The Bon-Air Casino
The Villa Moderne
The 4020 Club
The Southland Club
119 The Western Club

The Select Club
The Mayfair Club
The Northland Club
The Club Proviso
The 4011 Club
2135 Pulaski Road
The Lake Park Club
The Harlem Club
The 11901 Vincennes Club
The 406 Club

120 Part V

To Defendant William R. Johnson:

An Itemization of Books and Records Reflecting Gross and Net Incomes and the Sources Thereof, as Charged in the First Four Counts of the Indictment, as Follows:

1. Daily profit and loss statements, sometimes called "Day to Day Record", of each gambling house owned and operated by Johnson.

2. Ledger records showing name, address, and amount of wages paid by defendant Johnson to each of the employees working in his various gambling houses throughout the calendar years 1937, 1938 and 1939.

3. All of the books and records of the Lawrence Avenue Currency Exchange, i. e., those in which were shown the dates, names of payees, amounts, bank on which drawn, endorsers, and makers of all checks cashed, all correspondence, cancelled checks, bank books, bank statements, journal, general ledger, requisitions for money orders, records of money orders sold, two certain loose-leaf ring binder black books containing entries from the teller sheets, duplicate receipts for currency and checks received.

4. All of the books and records reflecting on the gambling business conducted at the Bon-Air Country Club.

5. The records showing the rental income of the premises located at 3424 Lawrence Avenue, commonly
121 known as the Albany Park Bank Building, and the premises located at 9730 South Western Avenue, a gambling house commonly known as the "Club Western".

6. The records showing the expenses of conducting a gambling business at the following locations:

The Horse-Shoe Club
The Casino Club
The Dev-Lin
The Lincoln Tavern
The Harlem Stables
The House of Niles
The D. & D. Club
The Bon-Air Casino
The Villa Moderne
The 4020 Club
The Southland Club
The Western Club
The Select Club
The Mayfair Club
The Northland Club
The Club Proviso
The 4011 Club
2135 Pulaski Road
The Lake Park Club
The Harlem Club
The 11901 Vincennes Club
The 406 Club

7. Receipts given by defendants Bernice Downey and Stuart Solomon Brown for money or checks transmitted to them by the various gambling houses owned and operated by the defendant William R. Johnson, last above mentioned.

8. Daily report of cash receipts and disbursements; daily ledger sheets; monthly recapitulation sheets.

9. All records pertaining to the purchase and installation of supplies, equipment, material and improvements of the aforesaid gambling establishments.

122 Part VI.

To Defendants:

William R. Skidmore
William Goldstein
Andrew J. Creighton
Jack Sommers
Edward Wait
James A. Hartigan
John M. Flanagan
William P. Kelly
Reginald E. Mackay
Stuart Solomon Brown
Bernice Downey

A Particularization of Acts, and the Time and Place Thereof:

1. At various times all during each of the calendar years 1936 down to on or about September 30, 1939, the exact dates thereof other than as hereinafter stated in paragraph numbered 3 being at this time unknown, managed and operated, or caused to be managed and operated, on a cash or currency basis in such a manner as to conceal the financial interest therein of and the true and correct taxable income derived therefrom by the defendant William R. Johnson, a gambling business, conducted under the following names:

The Horse-Shoe Club
The Casino Club
The Dev-Lin
The Lincoln Tavern
The Harlem Stables
The House of Niles
The D. & D. Club
The Bon-Air Casino
The Villa Moderne
The 4020 Club
The Southland Club
The Western Club

The Select Club
The Mayfair Club
123 The Northland Club
The Club Proviso
The 4011 Club
2135 Pulaski Road
The Lake Park Club
The Harlem Club
The 11901 Vincennes Club
The 406 Club

2. That said defendants last aforesaid and each of them did in the management and operation of said gambling business aforesaid knowingly and intentionally at the request and direction of said Johnson fail to maintain or otherwise keep available any books or records whatever of the gross receipts, gross income, business expenses and net income derived from said gambling business, all for the purpose of concealing and causing to be concealed said gambling business and the taxable gain derived therefrom from the Internal Revenue officers of the United States and thereby enable said Johnson wilfully to attempt to evade and defeat his individual income taxes for each of the said calendar years 1936 to 1939, inclusive, by filing false and fraudulent income tax returns as charged in the first four counts of the indictment.

3. That it was the general practice in the conduct of said gambling business aforesaid to operate the gambling houses located within the City of Chicago during the fall and winter months, and those located outside the City of Chicago but within the Counties of Cook and Lake during the spring and summer months, of each
124 of the calendar years 1936 to 1939, inclusive. Other than the above the Government cannot specify at this time with any more or greater particularity the exact periods of time during which said defendants operated or managed said gambling houses, except to state that it was the policy of said defendant Johnson to rotate the managers and employees of each of said gambling houses among all of said houses.

4. That all during the period, to wit, from on or about July, 1938, down to and including September 30, 1939, all of the last above named defendants made or caused to be

made numerous trips or visits to the Lawrence Avenue Currency Exchange for the purpose of delivering checks and currency to and thereafter receive from said defendants Brown or Downey packages of currency (and bags of coin), said packages and bags having been previously assorted and obtained for that purpose from the Central National Bank in Chicago and the North Shore National Bank of Chicago, all of which said packages of currency thus obtained constituted earnings or profits of said defendant Johnson derived from the operation of said gambling houses. Said sums thus obtained and transmitted aggregated $1,100,000, the detailed records of which were burned or otherwise destroyed by either one or both of the defendants Brown and Downey sometime during the months of October or November, 1939.

125 5. That sometime during or about the month of December, 1936, defendants Sommers and Hartigan conferred with defendant Johnson, and others, at the Horse-Shoe gambling house in Chicago, at which time and place defendant Johnson gave certain instructions to be complied with by the managers and operators of his various gambling houses, all for the purpose of concealing the ownership of and the income derived from said gambling business; and that all of said defendants last above mentioned did thereafter comply or attempt to comply with said instructions.

6. All during the calendar year 1936 and down to and including on or about March 15, 1937, all during the calendar year 1937 and down to and including on or about March 15, 1938, all during the calendar year 1938 and down to and including on or about March 15, 1939, and all during the calendar year 1939 and down to and including on or about March 15, 1940, aided, abetted, counseled, induced, advised and procured, the defendant Johnson wilfully to attempt to evade and defeat the payment of his the said Johnson's individual income taxes for each of said calendar years last stated, by filing on or about March 15, next succeeding the close of each of said calendar years 1936 to 1939, inclusive, false and fraudulent income tax returns, i.e., returns understating a large portion of the gross and net income and the taxes due thereon to the

126 United States of America, and returns concealing the source of all gains, profits and income derived by him the said Johnson from the operation of said gambling business.

127 **Part VII.**

To Defendant Jack Sommers: A Particularization of Other and Further Acts, and the Time and Place Thereof:

(1936)

1. Cashed checks at the Northern Trust Co., Chicago, during January to May, inclusive, 1936, aggregating $111,578.60.

2. Exchanged currency at the Northern Trust Co., Chicago, and at the Albany Park Deposit and Exchange, Chicago, all during the year 1936, aggregating $148,400.00.

3. Cashed checks at the Albany Park Deposit and Exchange, Chicago, during June to December, inclusive, 1936, aggregating $255,401.40.

(1937)

4. Cashed checks at the Albany Park Deposit and Exchange, Chicago, all during the year 1937, aggregating $623,690.56.

5. Exchanged currency at the Northern Trust Co., Chicago, and at the Albany Park Deposit and Exchange, Chicago, all during the year 1937.

(1938)

6. Cashed checks at the Albany Park Deposit and Exchange, Chicago, all during the year 1938, aggregating $376,783.14.

128 7. Exchanged currency at the Albany Park Deposit and Exchange Co., Chicago, the Lawrence Avenue Currency Exchange, Chicago, the Mid-City National Bank of Chicago, and the Northern Trust Co., Chicago (together with A. J. Creighton), all during the year 1938, aggregating $250,000.00.

7(a) Cashed checks at the Lawrence Avenue Currency Exchange during July 21 to December 31, inclusive, 1938, aggregating $194,557.53.

(1939)

8. Exchanged currency at the Northern Trust Co., Chicago, all during the year 1939, aggregating $100,000.00.

8(a) Cashed checks and exchanged currency at the Lawrence Avenue Currency Exchange, Chicago, and the

Northern Trust Co., Chicago, from January 1 to September 30, inclusive, 1939, aggregating $936,551.43.

9. On December 29, 1939, at Room 284 United States Court House, Chicago, Illinois, made under oath a false statement to certain Internal Revenue officers, to wit, Special Agents W. A. Sommers and C. L. Converse of the Intelligence Unit, and Frank J. Clifford, Revenue Agent, Bureau of Internal Revenue, Treasury Department of the United States.

10. On or about the 17th and 18th days of January and the 5th day of February 1940, appeared before a Federal grand jury at Chicago and did then and there testify falsely

for the purpose, among others, of concealing the
129 amount and source of the income of defendant Johnson for each of the calendar years 1936 to 1939, inclusive,

and thereby did then and there knowingly aid and assist said Johnson in wilfully attempting to evade and defeat the payment of his individual income taxes due to the United States of America for each of said calendar years.

11. (a) On or about March 5, 1937, filed his individual income tax return for the calendar year 1936, with the Collector of Internal Revenue at Chicago, Illinois.

(b) On or about March 14, 1938, filed his individual income tax return for the calendar year 1937 with the Collector of Internal Revenue at Chicago, Illinois.

(c) On or about March 15, 1939, filed his individual income tax return for the calendar year 1938 with the Collector of Internal Revenue at Chicago, Illinois.

(d) On or about March 15, 1940, filed his individual income tax return for the calendar year 1939 with the Collector of Internal Revenue, Chicago, Illinois.

12. On February 8, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of January, 1937, showing the total number of employees as 197 and the total wages paid during said month as $38,776.00.

130 13. On March 8, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of February, 1937, showing the total number of employees as 190 and the total wages paid during said month as $34,125.00.

14. On April 7, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of March, 1937, showing the total number of employees as 236 and the total wages paid during said month as $49,569.00.

15. On May 10, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of April, 1937, showing the total number of employees as 269 and the total wages paid during said month as $42,344.00.

16. On June 2, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of May, 1937, showing the total number of employees as 238 and the total wages paid during said month as $51,914.00.

17. On July 3, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for
131 the month of June, 1937, showing the total number of employees as 246 and the total wages paid during said month as $33,380.00.

18. On August 2, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of July, 1937, showing the total number of employees as 124 and the total wages paid during said month as $21,452.00.

19. On September 13, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of August, 1937, showing the total number of employees as 155 and the total wages paid during said month as $19,298.00.

20. On November 1, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of September, 1937, showing the total number of employees as 1 and the total wages paid during said month as $80.00.

21. On November 30, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of October, 1937, showing the total number of employees as 1 and the total wages paid during said month as $80.00.

132 22. On December 12, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois an employer's return under Title VIII of the Social Security Act for the months of November and December 1937, showing the total number of employees as 1 for each of said months and the wages paid during said month as $80.00 per each employee.

23. On April 16, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1938, showing 293 employees and $48,238.00 wages paid.

24. On July 19, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1938, showing 404 employees and $162,095.00 wages paid.

25. On October 11, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1938, showing 382 employees and $118,220.00 wages paid.

26. On January 24, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended December 31, 1938, showing 209 employees and $43,508.00 wages paid.

133 27. On April 13, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1939, showing 261 employees and $123,248.00 wages paid.

28. On July 18, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1939, showing 256 employees and $118,439.00 wages paid.

29. On October 10, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1939, showing 245 employees and $144,223.00 wages paid.

30. On January 29, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals for

the calendar year 1937 under Title IX of the Social Security Act showing the average number of employees quarterly as 178 and the total wages paid to them as $302,207.00.

31. On January 24, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals for the calendar year 1938 under Title IX of the Social Security Act showing the average number of employees quarterly as 282 and the total amount of wages paid to them during said calendar year as $387,088.00.

134 32. (a) Opened and maintained or caused to be opened and maintained a bank account at the Northern Trust Co., Chicago, from on or about October 4, 1934, down to and including December 31, 1939, under the name of one Jack Sommers, the same being a joint account with one Margaret Sommers.

(b) Opened and maintained or caused to be opened and maintained a bank account at the Northern Trust Co., Chicago, from on or about February 23, 1937, down to and including on or about March 3, 1938, under the name of one Jack Sommers.

(c) Opened and maintained or caused to be opened and maintained a bank account at the Northern Trust Co., Chicago, from on or about January 29, 1938, down to and including January 27, 1939, under the name of one Jack Sommers.

(d) Opened and maintained or caused to be opened and maintained a bank account at the Northern Trust Co., Chicago, from on or about August 3, 1939, down to and including on or about September 30, 1939, under the name of Jack and Margaret Sommers.

33. All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and income derived from, or ownership of,
135 said gambling business, and (b) converted said gains, profits and income derived from said gambling business into coin or currency and delivered the same to said "Johnson," all for the purpose thereby of wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade and defeat the payment of a large por-

tion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment.

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Part VIII

To Defendant Andrew J. Creighton:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

(1936)

1. Cashed checks at Mid-City National Bank of Chicago, all during the year 1936, aggregating $57,520.00.

(1937)

2. Cashed checks at the Mid-City National Bank of Chicago, all during the year 1937, aggregating $116,890.46.

(1938)

3. Cashed checks at the Mid-City National Bank of Chicago and the Washington Park Currency Exchange, Chicago, all during the year 1938, aggregating $139,334.95.

4. Exchanged currency at the Albany Park Deposit and Exchange Co., Chicago, the Lawrence Avenue Currency Exchange, Chicago, the Mid-City National Bank of Chicago, and the Northern Trust Co., Chicago (together with Jack Sommers), all during the year 1938, aggregating $250,000.00.

(1939)

5. Cashed checks and exchanged currency at the Lawrence Avenue Currency Exchange, Chicago, from Jan-
137 uary 1, to September 30, inclusive, 1939 in an amount at this time unknown.

6. On or about the 17th, 25th and 29th days of August, 1939, and the 26th day of January, and the 5th day of February 1940, appeared before a Federal grand jury at Chicago and did then and there testify falsely for the purpose, among others, of concealing the amount and source of the income of defendant Johnson for each of the calendar years 1936 and 1939, inclusive,

and thereby did then and there knowingly aid and assist said Johnson in wilfully attempting to evade and defeat the payment of his individual income taxes due the United States of America for each of said calendar years.

7. (a) On or about March 13, 1937, filed his individual income tax return for the calendar year 1936 with the Collector of Internal Revenue at Chicago, Illinois.

(b) On or about March 14, 1938, filed his individual income tax return for the calendar year 1937 with the Collector of Internal Revenue at Chicago, Illinois.

(c) On or about March 14, 1939, filed his individual income tax return for the calendar year 1938 with the Collector of Internal Revenue at Chicago, Illinois.

(d) On or about March 15, 1940, filed his individual income tax return for the calendar year 1939 with the Collector of Internal Revenue, Chicago, Illinois.

138 8. On January 21, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, four annual returns of excise tax on employers of eight or more individuals for the calendar year 1937 under Title IX of the Social Security Act showing the average number of employees quarterly as 59 and the total wages paid to them as $345,211.00.

9. On January 23, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, three annual returns of excise tax on employers of eight or more individuals for the calendar year 1938 under Title IX of the Social Security Act showing the average number of employees quarterly as 56 and the total amount of wages paid to them during said calendar year as $246,628.00.

10. On February 18, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, four Employer's Returns under Title VIII of the Social Security Act for the month of January, 1937, showing the total number of employees as 211 and the total wages paid during said month as $38,680.00.

11. On March 10, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, four Employer's Returns under Title VIII of the Social Security Act for the month of February, 1937, showing the total number of employees as 218 and the total wages paid during said month as $37,746.00.

12. On April 8, 1937, filed with the Collector of In-

ternal Revenue at Chicago, Illinois, four Employer's
139 Returns under Title VIII of the Social Security Act for the month of March, 1937, showing the total number of employees as 225 and the total wages paid during said month as $43,781.00.

13. On May 18, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, four Employer's Returns under Title VIII of the Social Security Act for the month of April, 1937, showing the total number of employees as 347 and the total wages paid during said month as $36,924.00.

14. On June 21, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, four Employer's Returns under Title VIII of the Social Security Act for the month of May, 1937, showing the total number of employees as 228 and the total wages paid during said month as $43,283.00.

15. On July 16, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, four Employer's Returns under Title VIII of the Social Security Act for the month of June, 1937, showing the total number of employees as 351 and the total wages paid during said month as $40,583.00.

16. On August 11, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, three Employer's Returns under Title VIII of the Social Security Act for the month of July, 1937, showing the total number of employees as 243 and the total wages paid during said month as $42,935.00.

140 17. On September 21, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, three Employer's Returns under Title VIII of the Social Security Act for the month of August, 1937, showing the total number of employees as 343 and the total wages paid during said month as $38,137.00.

18. On October 25, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, three Employer's Returns under Title VIII of the Social Security Act for the month of September, 1937, showing the total number of employees as 200 and the total wages paid during said month as $5,168.00.

19. On November 30, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of October, 1937, showing the total number of em-

ployees as 12 and the total wages paid during said month as $1,612.00.

20. On December 31, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of November, 1937, showing the total number of employees as 12 and the total wages paid during said month as $1,540.00.

21. On January 25, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of December, 1937, showing the total number of employees as 20 and the total wages paid during said month as $1,609.00.

141 22. On April 28, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, three Employer's Tax Returns under Title VIII of the Social Security Act covering the quarter ended March 31, 1938, showing 225 employees and $37,726.00 wages paid.

23. On July 25, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, three Employer's Tax Returns under Title VIII of the Social Security Act covering the quarter ended June 30, 1938, showing 252 employees and $94,072.00 wages paid.

24. On October 21, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1938, showing 221 employees and $68,131.00 wages paid.

25. On January 23, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, three Employer's Tax Returns under Title VIII of the Social Security Act covering the quarter ended December 31, 1938, showing 208 employees and $40,322.00 wages paid.

26. On April 25, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, two Employer's Tax Returns under Title VIII of the Social Security Act covering the quarter ended March 31, 1939, showing 247 employees and $119,040.00 wages paid.

27. On July 20, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, three Employer's Tax Returns under Title VIII of the Social Security Act cov-
142 ering the quarter ended June 30, 1939, showing 321 employees and $93,481.00 wages paid.

28. On October 28, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, three Employer's Tax Returns under Title VIII of the Social Security Act covering the quarter ended September 30, 1939, showing no employees and no wages paid.

29. (a) Opened and maintained or caused to be opened and maintained a bank account at the I. C. State Bank of Chicago, from on or about July 11, 1936, down to and including on or about September 4, 1937, under the name of one William Foley.

(b) Opened and maintained or caused to be opened and maintained a bank account at the Continental Illinois National Bank and Trust Company, Chicago, from on or about November 23, 1937, down to and including on or about July 21, 1938, under the name of Andrew J. Creighton, the same being a savings account numbered 81955.

(c) Opened and maintained or caused to be opened and maintained a bank account at the Mid-City National Bank of Chicago, from on or about October 25, 1936, down to and including November 9, 1939, under the name of one Andrew J. Creighton.

(d) Opened and maintained or caused to be opened and maintained a bank account at the Mid-City National Bank of Chicago, from on or about November 23, 1936, down to and including November 6, 1938, under the fictitious name of Crawford Cigarette Vending Service.

143 (e) Opened and maintained or caused to be opened and maintained a bank account at the Continental Illinois National Bank and Trust Co., Chicago, from on or about January 1, 1936, down to and including on or about December 31, 1939, under the name of one Andrew J. Creighton.

30. All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and income derived from, or ownership of said gambling business, and (b) converted said gains, profits and income derived from said gambling business into coin or currency and delivered the same to said Johnson, all for the purpose thereby of wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade

and defeat the payment of a large portion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment.

144 **Part IX**

To Defendant William P. Kelly:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. On January 3, 1940, at Room 284 United States Court House, Chicago, Illinois, made under oath a false statement to an Internal Revenue officer, to wit, Special Agent Clarence L. Converse of the Intelligence Unit, Bureau of Internal Revenue, Treasury Department of the United States.

2. On or about the 17th and 24th days of January, and the 5th day of February, 1940, appeared before a Federal grand jury at Chicago and did then and there testify falsely for the purpose, among others, of concealing the amount and source of the income of defendant Johnson for each of the calendar years 1936 to 1939, inclusive, and thereby did then and there knowingly aid and assist said Johnson in wilfully attempting to evade and defeat the payment of his individual income taxes due the United States of America for each of said calendar years.

3. (a) On or about March 14, 1937, filed his individual income tax return for the calendar year 1936 with the Collector of Internal Revenue at Chicago, Illinois.

(b) On or about March 14, 1938, filed his individual income tax return for the calendar year 1937 with the Collector of Internal Revenue at Chicago, Illinois.

145 (c) On or about March 14, 1939, filed his individual income tax return for the calendar year 1938 with the Collector of Internal Revenue at Chicago, Illinois.

(d) On or about March 15, 1940, filed his individual income tax return for the calendar year 1939 with the Collector of Internal Revenue at Chicago, Illinois.

4. On February 11, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of January, 1937, showing the total number of

employees as 177 and the total wages paid during said month as $36,461.00.

5. On March 10, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of February, 1937, showing the total number of employees as 165 and the total wages paid during said month as $29,077.00.

6. On April 15, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of March, 1937, showing the total number of employees as 25 and the total wages paid during said month as $3,744.00.

7. On May 7, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of April, 1937, showing the total number of employees as 143 and the total wages paid during said month as $14,-939.00.

146 8. On June 3, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of May, 1937, showing the total number of employees as 130 and the total wages paid during said month as $[illegible].00.

9. On July 15, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of June, 1937, showing the total number of employees as [illegible] and the total wages paid during said month as $[illegible].00.

10. On August 6, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of July, 1937, showing the total number of employees as [illegible] and the total wages paid during said month as $[illegible].00.

11. On September 14, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of August, 1937, showing the total number of employees as [illegible] and the total wages paid during said month as $[illegible].00.

12. On October 12, 1937, filed with the Collector of In-

ternal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of September, 1937, showing the total number of employees as none and the total wages paid during said month as none.

147 13. On November 8, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of October, 1937, showing the total number of employees as none and the total wages paid during said month as none.

14. On December 13, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of November, 1937, showing the total number of employees as none and the total wages paid during said month as none.

15. On January 12, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of December, 1937, showing the total number of employees as none and the total wages paid during said month as none.

16. On April 26, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1938, showing 144 employees and $15,754.00 wages paid.

17. On July 29, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1938, showing 191 employees and $48,620.00 wages paid.

18. On October 24, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois an Employer's
148 Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1938, showing 47 employees and $9,206.00 wages paid.

19. On January 31, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended December 31, 1938, showing 29 employees and $3,395.00 wages paid.

20. On April 27, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return

under Title VIII of the Social Security Act covering the quarter ended March 31, 1939, showing 196 employees and $91,942.00 wages paid.

21. On July 17, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1939, showing 222 employees and $82,181.00 wages paid.

22. On October 25, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1939, showing 2 employees and $4,733.00 wages paid.

23. On January 27, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals, under Title IX of the Social Security Act, for the calendar year 1937, showing the average number of employees quarterly as 65 and the total amount of wages paid to them during said calendar year as $129,544.00.

149 24. On January 31, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals, under Title IX of the Social Security Act, for the calendar year 1938, showing the average number of employees quarterly as 75 and the total amount of wages paid to them during said calendar year as $78,586.00.

25. All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and income derived from, or ownership of said gambling business, and (b) converted said gains, profits and income derived from said gambling business into coin or currency and delivered the same to said Johnson.

all for the purpose thereby of wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade and defeat the payment of a large portion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment.

150 **Part X**

To Defendant John M. Flanagan:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. (a) On or about March 5, 1937, filed his individual income tax return for the calendar year 1936 with the Collector of Internal Revenue at Chicago, Illinois.

(b) On or about February 26, 1938, filed his individual income tax return for the calendar year 1937 with the Collector of Internal Revenue at Chicago, Illinois.

(c) On or about March 14, 1939, filed his individual income tax return for the calendar year 1938 with the Collector of Internal Revenue at Chicago, Illinois.

(d) On or about March 15, 1940, filed his individual income tax return for the calendar year 1939 with the Collector of Internal Revenue at Chicago, Illinois.

2. Cashed checks at the Lawndale Currency Exchange, Chicago, all during the year 1936, aggregating $20,000.00.

3. Cashed checks and exchanged currency at the Lawrence Avenue Currency Exchange, Chicago, from January 1 to September 30, inclusive, 1939, in an amount at this time unknown.

151 4. On February 17, 1937, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of January, 1937, showing the total number of employees as 80 and the total wages paid during said month as $16,453.00.

5. On March 11, 1937, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of February, 1937, showing the total number of employees as 58 and the total wages paid during said month as $15,083.00.

6. On April 7, 1937, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of March, 1937, showing the total number of employees as 61 and the total wages paid during said month as $15,988.00.

7. On May 5, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return

under Title VIII of the Social Security Act for the month of April, 1937, showing the total number of employees as 61 and the total wages paid during said month as $9,279.00.

8. On June 4, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of May, 1937, showing the total number of employees as 82 and the total wages paid during said month as $15,-698.00.

152 9. On July 6, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of June, 1937, showing the total number of employees as 76 and the total wages paid during said month as $10,767.00.

10. On August 12, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of July, 1937, showing the total number of employees as 71 and the total wages paid during said month as $14,320.00.

11. On September 21, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of August, 1937, showing the total number of employees as 73 and the total wages paid during said month as $14,332.00.

12. On October 19, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of September, 1937, showing the total number of employees as 76 and the total wages paid during said month as $4,202.00.

13. On November 30, 1937, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of October, 1937, showing the total number of employees as 7 and the total wages paid during said month as $1,451.00.

153 14. On December 31, 1937, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of November, 1937, showing the total number of employees as 8 and the total wages paid during said month as $1,412.00.

15. On January 8, 1938, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of December, 1937, showing the total number of employees as 7 and the total wages paid during said month as $1,486.00.

16. On April 5, 1938, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1938, showing 65 employees and $11,984.00 wages paid.

17. On July 15, 1938, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1938, showing 82 employees and $33,544.00 wages paid.

18. On October 11, 1938, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1938, showing 48 employees and $6,473.00 wages paid.

154 19. On January 12, 1939, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended December 31, 1938, showing 47 employees and $12,481.00 wages paid.

20. On April 12, 1939, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1939, showing 80 employees and $35,588.00 wages paid.

21. On July 17, 1939, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1939, showing 87 employees and $24,328.00 wages paid.

22. On October 12, 1939, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1939, showing 29 employees and $6,434.00 wages paid.

23. On March 11, 1937, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more

individuals, under Title IX of the Social Security Act, for the calendar year 1936 showing wages paid during said calendar year as $39,825.00.

155 24. On January 8, 1938, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, and annual return of excise tax on employers of eight or more individuals, under Title IX of the Social Security Act, for the calendar year 1937, showing the average number of employees quarterly as 60 and the total amount of wages paid to them during said calendar year as $120,471.00.

25. On January 12, 1939, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals, under Title IX of the Social Security Act, for the calendar year 1938, showing the average number of employees quarterly as 34 and the total amount of wages paid to them during said calendar year as $65,132.00.

26. Opened and maintained or caused to be opened and maintained a bank account at the Liberty National Bank of Chicago, from on or about March 23, 1937, down to and including December 31, 1939, under the name of one John Flanagan, said account being designated a "special account."

27. All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and

156 income derived from, or ownership of said gambling business, and (b) converted said gains, profits and income derived from said gambling business into coin or currency and delivered the same to said Johnson,

all for the purpose thereby of wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade and defeat the payment of a large portion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment.

157 **Part XI**

To Defendant James A. Hartigan:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. On December 28, 1939, at Room 284 United States Court House, Chicago, Illinois, made under oath a false statement to certain Internal Revenue officers, to wit, Special Agents W. A. Sommers and C. L. Converse of the Intelligence Unit, and Henry Levine, Revenue Agent, Bureau of Internal Revenue, Treasury Department of the United States.

2. On or about the 9th, 12th and 17th days of January, 1940, appeared before a Federal grand jury at Chicago and did then and there testify falsely for the purpose, among others, of concealing the amount and source of the income of defendant Johnson for each of the calendar years 1936 to 1939, inclusive, and thereby did then and there knowingly aid and assist said Johnson in wilfully attempting to evade and defeat the payment of his individual income taxes due the United States of America for each of said calendar years.

3. (a) On or about March 5, 1937, filed his individual income tax return for the calendar year 1936 with the Collector of Internal Revenue at Chicago, Illinois.

(b) On or about March 14, 1938, filed his individual income tax return for the calendar year 1937 with the Collector of Internal Revenue at Chicago, Illinois.

158 (c) On or about March 15, 1939, filed his individual income tax return for the calendar year 1938 with the Collector of Internal Revenue at Chicago, Illinois.

(d) On or about March 15, 1940, filed his individual income tax return for the calendar year 1939 with the Collector of Internal Revenue, Chicago, Illinois.

4. Cashed checks and exchanged currency at the Lawrence Avenue Currency Exchange, Chicago, from January 1 to September 30, inclusive, 1939, in an amount at this time unknown.

5. On February 11, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of January, 1937, showing the total number of employees as 119 and the total wages paid during said month as $17,212.00.

6. On March 15, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of February, 1937, showing the total number of employees as 100 and the total wages paid during said month as $12,798.00.

7. On April 10, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of March, 1937, showing the total number of employees as 134 and the total wages paid during said month as $19,-721.00.

159 8. On June 1, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of April, 1937, showing the total number of employees as 183 and the total wages paid during said month as $19,933.00.

9. On June 9, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of May, 1937, showing the total nnmber of employees as 171 and the total wages paid during said month as $24,466.00.

10. On July 7, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois an Employer's Return under Title VIII of the Social Security Act for the month of June, 1937, showing the total number of employees as 358 and the total wages paid during said month as $44,551.00.

11. On August 4, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of July, 1937, showing the total number of employees as 313 and the total wages paid during said month as $56,-108.00.

12. On September 3, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of August, 1937, showing the total number of employees as 418 and the total wages paid during said month as $64,244.00.

160 13. On October 5, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of September, 1937, showing the total number of

employees as 240 and the total wages paid during said month as $6,546.00.

14. On November 8, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of October, 1937, showing the total number of employees as 9 and the total wages paid during said month as $1,364.00.

15. On December 7, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of November, 1937, showing the total number of employees as 9 and the total wages paid during said month as $1,320.00.

16. On January 13, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of December, 1937, showing the total number of employees as 10 and the total wages paid during said month as $1,392.00.

17. On January 29, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals for the calendar year 1937 under Title IX of the Social Security Act showing the average number of employees quarterly as 179 and the total wages paid to them as $274,042.00.

161 18. On January 24, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals for the calendar year 1938 under Title IX of the Social Security Act showing the average number of employees quarterly as 193 and the total amount of wages paid to them during said calendar year as $17,344.00. (This return was notarized on January 24, 1939, before Bernice Downey.)

19. On April 13, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1938 showing 263 employees and $5,586.00 wages paid.

20. On July 12, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1938, showing no employees and no wages paid.

21. On October 10, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1938, showing no employees and no wages paid.

22. On January 24, 1939, defendant Hartigan filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended December 31, 1938, showing 114 employees and $11,502.00 wages paid.

162 23. On April 11, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1939, showing 216 employees and $55,728.00 wages paid.

24. On July 11, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1939, showing 431 employees and $89,563.00 wages paid.

25. On October 26, 1939, caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1939, showing wages paid to employees as $151,192.00.

26. On or about November 1, 1939, fled from the City of Chicago to avoid service of process and the disclosure of his knowledge to agents of the Bureau of Internal Revenue of the income of the defendant Johnson for the years 1936, 1937, 1938 and 1939.

27. All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and income derived from, or ownership of said gambling business, and (b) converted said gains, profits and in-

163 come derived from said gambling business into coin or currency and delivered the same to said Johnson, all for the purpose thereby of wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade and defeat the payment of a large portion of his

individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment.

164 **Part XII**

To Defendant William Goldstein:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. On or about August 24, and December 22, 1939, and January 9 and 10, and February 13, 1940, appeared before a Federal grand jury at Chicago and did then and there testify falsely for the purpose, among others, of concealing the amount and source of the income of the defendant Johnson for each of the calendar years 1936 to 1939, inclusive, and thereby did then and there knowingly aid and assist said Johnson in wilfully attempting to evade and defeat the payment of a large part of his the said Johnson's individual income taxes due the United States of America for each of said calendar years as charged in the first four counts of the indictment.

2. On or about January 13, 1940, went to the Lawrence Avenue Currency Exchange, Chicago, and did then and there leave Grand Jury Exhibits 45 and 46, to wit, two ledger binders, the same being a part of the records of said exchange.

3. On or about September 1, 1938, made a visit or appeared at the aforesaid Casino Club located in the Portage Park Bank Building and did then and there make certain statements to police officers with respect to the ownership of said club.

4. On or about May 26, 1937, acquired, and did thereafter at all times down to on or about September 30, 1939, maintain and operate or cause to be maintained
165 and operated, a building in Chicago at 4715-17 West Irving Park Blvd., commonly known as the Portage Park Bank Building, in such a manner and under such circumstances as to conceal the fact that said building was the wire service headquarters for the gambling business, i. e., the central point from which certain information relating to horse races and race tracks was transmitted by electrical device, that is to say, by telephone and teletype to various gambling houses as more particularly referred to in Parts I to IV herein.

5. On or about July 6, 1937, acquired for the use and benefit of defendant Johnson, and did thereafter and at all times down to on or about September 30, 1939, maintain and operate or cause to be maintained and operated, a building in Chicago at 3424 Lawrence Avenue, commonly known as the Albany Park Bank Building, in such a manner and under such circumstances as to conceal the fact that said building was the financial headquarters of said gambling houses, i. e., the place where checks were cashed and currency exchanged constituting the gains, profits and income derived from the operation of the various gambling houses more particularly referred to in Parts I to IV herein.

6. At various times between the dates of January 1, 1936 and December 31, 1939, expended currency for the use and benefit of defendant Johnson, in such a manner and under such circumstances as to conceal the source of said currency, said expenditures aggregating at least $300,000.00.

166 Part XIII

To Defendant Orrie Alexander:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. On or about August 22, and December 6, 1939, and February 16, 1940, appeared before a Federal grand jury at Chicago and did then and there testify falsely for the purpose, among others, of concealing the amount and source of the income of the defendant Johnson for each of the calendar years 1936 to 1939, inclusive, and thereby did then and there knowingly aid and abet said Johnson in wilfully attempting to evade and defeat the payment of a large part of his the said Johnson's income taxes due the United States of America for each of said calendar years.

2. (a) On or about March 5, 1937, filed his individual income tax return for the calendar year 1936 with the Collector of Internal Revenue at Chicago, Illinois.

(b) On or about March 11, 1938, filed his individual income tax return for the calendar year 1937 with the Collector of Internal Revenue at Chicago, Illinois.

(c) On or about March 6, 1939, filed his individual income tax return for the calendar year 1938 with the Collector of Internal Revenue at Chicago, Illinois.

167 (d) On or about March 13, 1940, filed his individual income tax return for the calendar year 1939 with the Collector of Internal Revenue, Chicago, Illinois.

3. All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and income derived from, or ownership of, said gambling business, and (b) converted said gains, profits and income derived from said gambling business into coin or currency and delivered the same to said Johnson,

All for the purpose thereby of wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade and defeat the payment of a large portion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counst of the indictment.

168 Part XIV.

To Defendant Bernice Downey:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. From July 20, 1938 to September 30, 1939 operated with defendant Stuart Solomon Brown the Lawrence Avenue Currency Exchange for the use and benefit of defendant Johnson and more specifically, for the purpose of furnishing banking facilities to the gambling establishments, hereinbefore named, so as to enable the said Johnson to conceal his interest therein and his income therefrom.

2. Removed from the premises occupied by said Lawrence Avenue Currency Exchange all of the books, records, papers and documents of said Lawrence Avenue Currency Exchange in October 1939, for the purpose of concealing from Internal Revenue officers of the United States the information therein contained concerning the income of said William R. Johnson for the years 1936, 1937, 1938 and 1939.

3. In November 1939 said defendant fled the jurisdic-

tion of the Court and deliberately absented herself for the purpose of avoiding service of process to testify to her knowledge of the income of said defendant, William R. Johnson, for the years 1936, 1937, 1938 and 1939.

4. Cashed checks, in conjunction with defendant Brown, through the Lawrence Avenue Currency Ex-
169 change, Chicago, all during the year 1938, aggregating at least $194,557.53.

5. Cashed checks and exchanged currency through the Lawrence Avenue Currency Exchange, Chicago, in conjunction with defendant Brown, all during the year 1939, aggregating at least $679,841.43.

170 Part XV

To Defendant Stuart Solomon Brown:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. From July 20, 1938 to September 30, 1939 operated with defendant Bernice Downey the Lawrence Avenue Currency Exchange for the use and benefit of defendant Johnson and more specifically, for the purpose of furnishing banking facilities to the said gambling establishments, hereinbefore named, so as to enable the said Johnson to conceal his interest therein and his income therefrom.

2. On or about November 1, 1939 fled from the city of Chicago to avoid service of process and the disclosure of his knowledge to agents of the Bureau of Internal Revenue of the income of the defendant Johnson for the years 1936, 1937, 1938 and 1939.

3. On or about October 1, 1939 agreed with defendant Bernice Downey that they would remove, conceal and destroy certain books and records of the Lawrence Avenue Currency Exchange pertaining to the income and expenditures of the defendant Johnson for the calendar years 1936, 1937, 1938 and 1939.

4. At diverse times in the months of January and February 1940, testified falsely before the Federal grand jury for the Northern District of Illinois at Chicago relative to certain matters within his knowledge pertaining to the income of the said defendant Johnson for the years 1936, 1937, 1938 and 1939.

171 5. Cashed checks through the Lawrence Avenue Currency Exchange, Chicago, all during the year

1938, in conjunction with defendant Bernice Downey, aggregating at least $194,557.53.

6. Cashed checks and exchanged currency through the Lawrence Avenue Currency Exchange, Chicago, in conjunction with defendant Bernice Downey, all during the year 1939, aggregating at least $679,841.43.

172 Part XVI

To defendant Reginald E. Mackay:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. Sometime during or about the month of December, 1939, said defendant fled the jurisdiction of the court and deliberately absented himself for the purpose of avoiding service of process to testify to his knowledge of the income of said defendant William R. Johnson for the years 1936, 1937, 1938 and 1939.

2. Cashed checks and exchanged currency at the Lawrence Avenue Currency Exchange, Chicago, from January 1 to September 30, inclusive, 1939, in an amount at this time unknown.

3. On February 11, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of January, 1937, showing the total number of employees as 89 and the total wages paid during said month as $9,346.00.

4. On March 8, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of February, 1937, showing the total number of employees as 102 and the total wages paid during said month as $10,545.00.

173 5. On April 6, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of March, 1937, showing the total number of employees as 94 and the total wages paid during said month as $12,236.00.

6. On May 10, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for

the month of April, 1937, showing the total number of employees as 85 and the total wages paid during said month as $5,368.00.

7. On June 7, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of May, 1937, showing the total number of employees as 87 and the total wages paid during said month as $11,301.00.

8. On July 26, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of June, 1937, showing the total number of employees as 78 and the total wages paid during said month as $2,672.00.

9. On April 26, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1938, showing 73 employees and $9,654.00 wages paid.

174 10. On July 21, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1938, showing 73 employees and $18,947.00 wages paid.

11. On October 28, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1938, showing 59 employees and $13,121.00 wages paid.

12. On January 31, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended December 31, 1938, showing 48 employees and $6,035.00 wages paid.

13. On April 5, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1939, showing 93 employees and $22,872.00 wages paid.

14. On July 19, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1939, showing 78 employees and $16,239.00 wages paid.

15. On October 7, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1939, showing 21 employees and $2,770.00 wages paid.

175 16. On January 13, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals, under Title IX of the Social Security Act, for the calendar year 1937, showing the average number of employees quarterly as 87 and the total amount of wages paid to them during said calendar year as $51,468.00.

17. On January 31, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals, under Title IX of the Social Security Act, for the calendar year 1938, showing the average number of employees quarterly as 31 and the total amount of wages paid to them during said calendar year as $48,420.00.

18. All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and income derived from, or ownership of, said gambling business, and (b) converted said gains, profits and income derived from said gambling business into coin or currency and delivered the same to said Johnson,

All for the purpose thereby of wilfully aiding, abetting inducing and procuring said Johnson wilfully to attempt

176 to evade and defeat the payment of a large portion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment.

177 Part XVII

To Defendant Edward Wait:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. (a) On or about March 15, 1937, filed his individual income tax return for the calendar year 1936 with the Collector of Internal Revenue at Chicago, Illinois.

(b) On or about March 10, 1938, filed his individual income tax return for the calendar year 1937 with the Collector of Internal Revenue at Chicago, Illinois.

(c) On or about March 14, 1939, filed his individual income tax return for the calendar year 1938 with the Collector of Internal Revenue at Chicago, Illinois.

(d) On or about March 15, 1940, filed his individual income tax return for the calendar year 1939 with the Collector of Internal Revenue, Chicago, Illinois.

2. Cashed checks and exchanged currency at the Lawrence Avenue Currency Exchange, Chicago, from January 1 to September 30, inclusive, 1939, in an amount at this time unknown.

3. Between the dates of January 1, 1938, and December 31, 1939, expended currency for the use and benefit of defendant Johnson at the Bon-Air Country Club,
178 Wheeling, Illinois, during 1938 and 1939, aggregating respectively for said years $238,000.00 and $232,-000.00, or a total of $470,000.00, in such a manner and under such circumstances as to conceal the fact that said currency belonged to said Johnson.

4. On July 30, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1938, showing 459 employees and $51,512.04 wages paid.

5. On October 30, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1938, showing 371 employees and $67,058.35 wages paid.

6. On January 5, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended December 31, 1938, showing no employees and no wages paid.

7. On July 31, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1939, showing 387 employees and $69,016.74 wages paid.

8. On October 7, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act

covering the quarter ended September 30, 1939, showing 443 employees and $119,797.67 wages paid.

179 9. On January 6, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals under Title IX of the Social Security Act for the calendar year 1938, showing the average number of employees quarterly as 160 and the total amount of wages paid to them during said calendar year as $118,570.39.

10. All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and income derived from, or ownership of, said gambling business, and (b) converted said gains, profits and income derived from said gambling business into coin or currency and delivered the same to said Johnson, all for the purpose thereby or wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade and defeat the payment of a large portion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment.

180 **Part XVIII.**

To Defendant William R. Skidmore:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. Conferred at frequent intervals, all during 1936 to 1939, inclusive, with defendant Johnson at 3500 Lake Shore Drive and 2840 South Kedzie Avenue, Chicago, Illinois.

2. All during the years 1936 to 1939, inclusive, furnished and caused to be furnished or delivered farm produce from the Pine Tree Dairy Farm located in McHenry County, Illinois (owned by said defendant Skidmore), to various of the defendant Johnson's gambling establishments.

3. Beginning with the calendar year 1936 and for each calendar year thereafter down to and including that of 1939, defendants Skidmore and Johnson caused their re-

spective individual income tax returns for each of said years to be made out by the same person.

4. On or about July 21, 1934, appeared as a witness for defendant Johnson at a hearing in the office of the Internal Revenue Agent in Charge at Chicago.

5. On or about May 26, 1937, acquired or caused to be acquired and thereafter continued to own and operate, or caused to be operated, a building located at 4715-17 West Irving Park Road, Chicago, Illinois, commonly known as the Portage Park Bank Building, which said building was used to house a gambling house, and a certain wire service headquarters essential to the gambling business of defendant Johnson.

181 6. All during the years 1936 to 1939, inclusive, assisted in the management and operation in and about the City of Chicago and Cook County of a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) caused no books or records to be kept or maintained reflecting the gains, profits and income derived from, or the ownership of, said gambling business, and (b) caused said gains, profits and income derived from said gambling business to be converted into coin or currency and delivered to said Johnson, all for the purpose thereby of wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade and defeat the payment of a large portion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment.

7. (a) On or about March 15, 1937, filed his individual income tax return for the calendar year 1936 with the Collector of Internal Revenue at Chicago, Illinois.

(b) On or about March 10, 1938, filed his individual income tax return for the calendar year 1937 with the Collector of Internal Revenue at Chicago, Illinois.

(c) On or about March 14, 1939, filed his individual income tax return for the calendar year 1938 with the Collector of Internal Revenue at Chicago, Illinois.

182 (d) On or about March 15, 1940, filed his individual income tax return for the calendar year 1939 with the Collector of Internal Revenue, Chicago, Illinois.

8. On August 25, 1938, made a statement under oath in Room 284 U. S. Court House, Chicago, in the presence of Internal Revenue Agent John T. Blocker and Special

Agents W. A. Sommers and C. L. Converse of the Bureau of Internal Revenue, Treasury Department.

9. On June 23, 1936, made a statement under oath in Room 475 U. S. Court House, Chicago, in the presence of Internal Revenue Agent N. M. Riewer and Special Agent W. A. Sommers of the Bureau of Internal Revenue, Treasury Department.

10. Engaged all during the years 1937, 1938 and 1939 in the gambling business in one form or another.

(Sgd) William J. Campbell,
William J. Campbell,
United States Attorney.

Filed July 19, 1940.

184 And on, to wit, the 19th day of July, A. D. 1940, came the defendants by their attorneys and filed in the Clerk's office of said Court Exceptions to Government's Bill of Particulars in words and figures following, to wit:

185 In the District Court of the United States.

• • (Caption—32168) • •

EXCEPTIONS OF THE DEFENDANTS WILLIAM R. SKIDMORE, WILLIAM GOLDSTEIN, ANDREW J. CREIGHTON, JACK SOMMERS, EDWARD WAIT, JAMES A. HARTIGAN, JOHN M. FLANAGAN, ORRIE ALEXANDER, WILLIAM P. KELLY, REGINALD E. MACKAY, STUART SOLOMON BROWN AND BERNICE DOWNEY TO GOVERNMENT'S BILL OF PARTICULARS.

And now comes the defendant, William R. Skidmore, by William W. Smith, his attorney; the defendant, William Goldstein, by Leslie E. Salter, his attorney; and the defendants, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey, by Edward J. Hess, their counsel, and object and except to the Bill of Particulars supplied to them by the United States in pursuance to the order of this Court so to do, and respectfully represent unto the Court that said Bill of Particulars is deficient, vague and indefinite, and is not in reasonable compliance with the order of this Court entered herein on, to-wit, June

17, 1940, (as amended) in the respects hereinafter indicated.

These defendants and each of them respectfully represent unto the Court that in and by the order of this Court aforesaid, that, as to these defendants respectively, it was provided as follows, to-wit:

186 "1. A particularization of the act or acts, and at what time or times, and in what place or places, the aforesaid defendants, or either of them, aided, abetted, counselled, induced and procured the defendant, William R. Johnson, to do and perform the alleged unlawful offenses described in Counts 1, 2, 3 and 4, respectively, of the indictment."

The part and parts of said Bill of Particulars to which these defendants respectively object and except are as follows:

Part VI.

Paragraph 1.—For failure to specify dates, name of the defendant or defendants, respectively, who operated the alleged gambling business under the names itemized in said paragraph;

And for the further reason that all allegations commencing with the word "all" in line 8 of said paragraph to the end thereof are argumentative, and do not constitute specification of material facts proper to be contained in a Bill of Particulars;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax, by these defendants or any one of them.

Paragraph 2.—For failure to specify the name or names of these defendants, respectively, and the time during which it is contended that they or either of them operated gambling businesses under the names specified in the preceding paragraph;

And for failure to specify the name or names, of these defendants, respectively, who were requested and di-

187 rected by defendant, William R. Johnson, to fail to maintain or keep books of record;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson

to attempt to evade and defeat income tax, by these defendants or any one of them.

Paragraph 3.—For failure to specify particular facts giving dates, names of defendants and names of places, of the business alleged to have been conducted by these defendants or either of them;

And for the further reason that said paragraph specifies no material facts of acts done by these defendants, or either of them, which it is contended constituted aiding and abetting of William R. Johnson to attempt to evade and defeat his income tax;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax, by these defendants or any one of them.

Paragraph 4.—For failure to specify the name or names and the time or times that these defendants or either of them made trips to the Lawrence Avenue Currency Exchange;

And for failure to specify in what respect it is contended that the defendants Brown and Downey enumerated in this part of the Bill of Particulars, were able to receive from themselves certain packages of currency or coin;

188 And for failure to specify records of Lawrence Avenue Currency Exchange alleged to have been destroyed by defendant Brown or Downey, or either of them;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax, by these defendants or any one of them.

Paragraph 5.—For failure to specify names of defendants other than Sommers and Hartigan with whom Johnson is alleged to have had conference;

And for failure to specify the general nature of the instructions alleged to have been given by Johnson;

And for inclusion in said paragraph from the word "all" in line 7 to the end that said paragraph, argumentative and immaterial matter;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to

attempt to evade and defeat income tax, by these defendants or any one of them.

Paragraph 6.—For failure to specify the act or acts done, the time or times when, the place or places where, and the name or names of these defendants (as required by the aforesaid order of this Court) alleged to have been done as set forth in this paragraph.

(Argumentatively, said paragraph makes recitations fully as general as those contained in the indictment with respect to which this Court ordered a Bill of Particulars);

189 And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax, by these defendants or any one of them.

Part VII—Jack Sommers.

Paragraph 1.—For failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 2.—For failure to specify the amount of currency exchanged at The Northern Trust Company and at the Albany Park Deposit & Exchange, respectively;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 3.—For failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 4.—For failure to specify the count of the indictment which it is contended that said act or acts are

190 applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 5.—For failure to specify the amount of currency exchanged at The Northern Trust Company and at the Albany Park Deposit & Exchange, respectively;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 6.—For failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 7.—For failure to specify amount of currency exchanged at each of the named banks and exchanges, and what part by defendant, Sommers, and what part by defendant, Creighton;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 7(a)—For failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

191 Paragraph 8.—For failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 8(a)—For failure to specify what checks were cashed and what currency was exchanged;

And for failure to specify the amount cashed or exchanged at either of the institutions mentioned;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 9.—For failure to specify the general nature of the alleged false statement;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 10.—For failure to specify the general nature of the alleged false testimony given before the Grand Jury by defendant, Sommers;

And for including, commencing with the words "and thereby" in the 7th line, to the end of said paragraph, argumentative and immaterial matter;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R.
192 Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 11(a), 11(b), 11(c) and 11(d)—For failure to specify the count of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraphs 12 to 31, both inclusive—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 32(a), 32(b), 32(c) and 32(d)—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 33.—For failure to specify the time or times when, or the place or places where, that defendant, Jack Sommers, operated a gambling business in the City of Chicago for defendant, Johnson;

And for failure to specify the time or times when, or the place or places where, defendant, Jack Sommers, caused a gambling business to be managed and operated in and about the City of Chicago for defendant, Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

And for failure to specify what gains, profits or income were converted into coin or currency by defendant,
193 Jack Sommers, including the time or times when so converted, and the place or places from where con-

verted, and the time or times and the amounts of delivery thereof to defendant Johnson;

And for including from the word "all" in line 11 of said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same are properly particularized.

Part VIII—Andrew J. Creighton.

Paragraph 1.—For failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Andrew J. Creighton.

Paragraph 2.—For failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Andrew J. Creighton.

Paragraph 3.—For failure to specify the amount of checks cashed at each of the named institutions;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Andrew J. Creighton.

194 Paragraph 4.—For failure to specify the amount of currency exchanged at each of the institutions mentioned;

And for failure to specify what part of said currency was exchanged by defendant Creighton, and what part by defendant Sommers;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Andrew J. Creighton.

Paragraph 5.—For failure to specify the amount of checks cashed and the amount of currency exchanged, respectively;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to

attempt to evade and defeat income tax by defendant, Andrew J. Creighton.

Paragraph 6.—For failure to specify the alleged false testimony given before the Grand Jury which it is contended was for the purpose of concealing the amount and source of the income of defendant Johnson;

And for including in said paragraph from the word "and" in line 7 to the end thereof, argumentative and immaterial matter;

And for failure to specify, respectively, the counts and the alleged testimony in connection therewith which it is contended constituted aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant Creighton.

195 Paragraph 7(a), 7(b), 7(c), 7(d)—For failure to specify the count of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Andrew J. Creighton.

Paragraphs 8 to 28, both inclusive—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Andrew J. Creighton.

Paragraph 29(a), 29(b), 29(c), 29(d) and 29(e)—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Andrew J. Creighton.

Paragraph 30.—For failure to specify the time or times when, or the place or places where, that defendant, Andrew J. Creighton, operated a gambling business in the City of Chicago for defendant Johnson;

And for failure to specify the time or times when, or the place or places where, defendant, Andrew J. Creighton, caused a gambling business to be managed and operated in and about the City of Chicago for defendant Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

196 And for failure to specify what gains, profits or income were converted into coin or currency by de-

fendant, Andrew J. Creighton, including the time or times when so converted, and the place or places from where converted, and the time or times and the amounts of delivery thereof to defendant Johnson;

And for including from the word "all" in line 11 of said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same are properly particularized.

Part IX—William P. Kelly.

Paragraph 1.—For failure to state substance of the contents of the statement referred to;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, William P. Kelly.

Paragraph 2.—For failure to state the substance of the false testimony referred to;

And for including the conclusions enumerated in the last 5 lines of said paragraph;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, William P. Kelly.

197 Paragraphs 3(a), 3(b), 3(c) and 3(d)—For failure to specify the count of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, William P. Kelly.

Paragraphs 4 to 24, both inclusive—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, William P. Kelly.

Paragraph 25.—For failure to specify the time or times when, or the place or places where, that defendant, William P. Kelly, operated a gambling business in the City of Chicago for defendant Johnson;

And for failure to specify the time or times when, or the place or places where, defendant, William P. Kelly, caused a gambling business to be managed and operated in and about the City of Chicago for defendant Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

And for failure to specify what gains, profits or income were converted into coin or currency by defendant, William P. Kelly, including the time or times when so converted, and the place or places from where converted, and the time or times and the amounts of delivery thereof to defendant Johnson;

And for including from the word "all" in line 11 of 198 said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same are properly particularized.

Part X—John M. Flanagan.

Paragraphs 1(a), 1(b), 1(c) and 1(d)—For failure to specify the count of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting William R. Johnson to attempt to evade and defeat income tax by defendant, John M. Flanagan.

Paragraph 3.—For failure to specify the amounts of the checks alleged to have been cash and currency exchanged;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, John M. Flanagan.

Paragraphs 4 to 25, both inclusive—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, John M. Flanagan.

Paragraph 27.—For failure to specify the time or times when, or the place or places where, that defendant, John M. Flanagan, operated a gambling business in the City of Chicago for defendant Johnson;

199 And for failure to specify the time or times when, or the place or places where, defendant, John M. Flanagan, caused a gambling business to be managed and operated in and about the City of Chicago for defendant Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

And for failure to specify what gains, profits or income were converted into coin or currency by defendant, John M. Flanagan, including the time or times when so converted, and the place or places from where converted, and the time or times and the amounts of delivery thereof to defendant, Johnson;

And for including from the word "all" in line 11 of said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same are properly particularized.

Part XI—James A. Hartigan.

Paragraph 1.—For failure to specify the substance of the statement made which it is alleged was false;

And for failure to state the count or counts to which it is contended that said act or acts are applicable.

Paragraph 2.—For failure to state the substance of the alleged false testimony given;

And for failure to specify the count it is contended that same is applicable.

200 Paragraphs 3(a), 3(b), 3(c) and 3(d)—For failure to specify the count of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, James A. Hartigan.

Paragraph 4.—For failure to specify the amount of checks cashed and the amount of currency exchanged;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, James A. Hartigan.

Paragraphs 5 to 26, both inclusive—For failure to specify

the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, James A. Hartigan.

Paragraph 27.—For failure to specify the time or times when, or the place or places where, that defendant, James A. Hartigan, operated a gambling business in the City of Chicago for defendant Johnson;

And for failure to specify the time or times when, or the place or places where, defendant, James A. Hartigan, caused a gambling business to be managed and operated in and about the City of Chicago for defendant Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

And for failure to specify what gains, profits or income were converted into coin or currency by defendant, James A. Hartigan, including the time or times when so converted, and the place or places from where converted, and the time or times and the amounts of delivery thereof to defendant Johnson;

And for including from the word "all" in line 11 of said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same are properly particularized.

Part XII—William Goldstein.

Paragraph 1.—For failure to specify the substance of the alleged false testimony, and the count or counts of the indictment to which it is contended that same is applicable.

Paragraph 5.—For failure to specify the alleged manner and circumstances of operating the building in question which it is contended was done to conceal its ownership and nature and transaction in connection therewith;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, William Goldstein.

Paragraph 6.—For failure to specify and particularize the time or times when, the place or places where, and the

amount of currency contended to have been expended
202 for the benefit of defendant Johnson by defendant
Goldstein aggregating at least Three Hundred Thousand Dollars ($300,000.00);

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable.

Part XIII—Orrie Alexander.

Paragraph 1.—For failure to specify the substance of the alleged false testimony, and for failure to specify the count or counts to which it is contended same is applicable;

And for including conclusions consisting of the last 5 lines of said paragraph.

Paragraphs 2(a), 2(b), 2(c), and 2(d)—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Orrie Alexander.

Paragraph 3.—For failure to specify the time or times when, or the place or places where, that defendant, Orrie Alexander, operated a gambling business in the City of Chicago for defendant Johnson;

And for failure to specify the time or times when, or the place or places where, defendant, Orrie Alexander, caused a gambling business to be managed and operated in and about the City of Chicago for defendant Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

And for failure to specify what gains, profits or income
were converted into coin or currency by defendant,
203 Orrie Alexander, including the time or times when so
converted, and the place or places from where converted, and the time or times and the amounts of delivery thereof to defendant Johnson;

And for including from the word "all" in line 11 of said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same are properly particularized.

Part XIV—Bernice Downey.

Paragraph 2.—For failure to specify books, records, etc., alleged to have been removed from Lawrence Avenue Currency Exchange;

And for including argumentative matter commencing from the word "for" in line 4 to the end of said paragraph;

And for failure to specify which count of the indictment it is contended said acts are applicable.

Paragraph 3.—To strike this paragraph as being immaterial and not constituting a proveable fact.

Part XV—Stuart Solomon Brown.

Paragraph 2.—To strike this paragraph as not constituting proveable facts.

Paragraph 3.—For failure to specify books, records, etc., of Lawrence Avenue Currency Exchange alleged to have been destroyed;

And for failure to specify which count of the indictment it is contended said acts are applicable.

204 Paragraph 4.—For failure to specify the substance of the false testimony referred to;

And for failure to specify the count or counts of the indictment to which it is contended same is applicable.

Part XVI—Reginald E. Mackay.

Paragraph 1.—To strike this paragraph as not constituting particularization of proveable facts.

Paragraph 2.—For failure to specify the amounts of checks cashed and currency exchanged, respectively;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable.

Paragraphs 3 to 17, both inclusive—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Reginald E. Mackay.

Paragraph 18.—For failure to specify the time or times when, or the place or places where, that defendant, Reginald E. Mackay, operated a gambling business in the City of Chicago for defendant Johnson;

And for failure to specify the time or times when, or the place or places where, defendant, Reginald E. Mackay, caused a gambling business to be managed and operated in and about the City of Chicago for defendant Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

205 And for failure to specify what gains, profits or income were converted into coin or currency by defendant, Reginald E. Mackay, including the time or times when so converted, and the place or places from where converted, and the time or times and the amounts of delivery thereof to defendant Johnson;

And for including from the word "all" in line 10 of said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same are properly particularized.

Part XVII—Edward Wait.

Paragraphs 1(a), 1(b), 1(c) and 1(d)—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Edward Wait.

Paragraph 2.—For failure to specify the amount of checks cashed and the amount of currency exchanged during the period mentioned;

And for failure to specify which count of the indictment it is contended that said act or acts are applicable.

Paragraph 3.—For failure to specify the amount of currency expended during the period set forth in this paragraph and the manner and for what purpose the same was expended, which it is contended was for the use of defendant Johnson;

And for failure to specify the count or counts which it is contended that said act or acts apply, when the same are properly particularized.

206 Paragraphs 4 to 9, both inclusive—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R.

Johnson to attempt to evade and defeat income tax by defendant, Edward Wait.

Paragraph 10.—For failure to specify the time or times when, or the place or places where, that defendant, Edward Wait, operated a gambling business in the City of Chicago for defendant Johnson;

And for failure to specify the time or times when, or the place or places where, defendant, Edward Wait, caused a gambling business to be managed and operated in and about the City of Chicago for defendant Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

And for failure to specify what gains, profits or income were converted into coin or currency by defendant, Edward Wait, including the time or times when so converted, and the place or places from where converted, and the time or times and the amounts of delivery thereof to defendant Johnson;

And for including from the word "all" in line 11 of said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same properly particularized.

207 Part XVIII—William R. Skidmore.

Paragraph 5.—For failure to specify and explain the particularization in this paragraph with respect to the acquisition of said Portage Park Bank Building, in the light of substantially the same specifications in Part XII, Paragraph 4, that defendant Goldstein had performed said acts.

Paragraph 6.—For failure to specify the time or times when, or the place or places where, that defendant, William R. Skidmore, operated a gambling business in the City of Chicago for defendant Johnson;

And for failure to specify the time or times when, or the place or places where, defendant, William R. Skidmore, caused a gambling business to be managed and operated in and about the City of Chicago for defendant Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

And for failure to specify what gains, profits or income

were converted into coin or currency by defendant, William R. Skidmore, including the time or times when so converted, and the place or places from where converted, and the time or times and the amounts of delivery thereof to defendant Johnson;

And for including from the word "all" in line 11 of said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same are properly particularized.

208 Paragraphs 7(a), 7(b), 7(c) and 7(d)—For failure to specify the count or counts of the indictment which it is contended said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, William R. Skidmore.

Paragraph 8.—For failure to specify the substance of the statement mentioned, and the count or counts, and the manner which it is contended that same is applicable and constitutes aiding and abetting of defendant Johnson to attempt to evade and feat income tax by defendant Skidmore.

Paragraph 9.—Same objection and exception as paragraph 8 above.

Paragraph 10.—For failure to state more specifically the time or times when, and the place or places where, and the means by or through which it is contended that such act or acts constituted aiding and abetting defendant Johnson to attempt to evade and defeat his income tax by defendant Skidmore, when said act or acts are properly particularized, including the count or counts which it is contended that the same is applicable.

209 We now wish to direct the Court's attention to a number of features of the Bill of Particulars, which we contend indicate the insufficiency and inaccuracy of said Bill almost to a point of design in its failure to meet the requirements of the order directing its presentation.

A.

Parts I to IV, inclusive, in giving alleged particulars of the source and amounts of income of defendant Johnson, avers (in substance) that said income all came from transactions of defendants, Sommers, Creighton and Flanagan,

(with some mention of one Downey, Foley and Gitzen, who are not defendants) as follows:

Part I —1936—Sommers;
—Creighton;
—Flanagan;

Part II —1937—Sommers;
—Creighton;

Part III—1938—Sommers;
—Creighton;

Part IV—1939—Sommers;

Yet:

By Part VI of the Bill, commencing at p. 12, we are advised that defendants Skidmore, Goldstein, Creighton, Sommers, Wait, Hartigan, Flanagan, Alexander, Kelly, Mackay, Brown and Downey, (1) managed and operated certain gambling business on a cash or currency basis; (2) at the request of defendant Johnson; and (3) transformed certain checks and currency into currency at Lawrence Avenue Currency Exchange, which currency constituted earnings of Johnson.

210 By Part IX, par. 25, p. 39, that defendant Kelly operated a gambling business during the years 1936 to 1939; converted all the gains, profits and income thereof into coin or currency, and delivered same to Johnson, which alleged delivery is contrary to the particulars of receipts stated in aforesaid Parts I to IV.

By Part XI, par. 27, p. 52, that defendant Hartigan operated a gambling business during the years 1936 to 1939; converted all the gains, profits and income thereof into coin or currency, and delivered same to Johnson, which alleged delivery is contrary to the particulars of receipts stated in aforesaid Parts I to IV.

By Part XIII, par. 3, p. 57, that defendant Alexander operated a gambling business during the years 1936 to 1939; converted all the gains, profits and income thereof into coin or currency, and delivered same to Johnson, which alleged delivery is contrary to the particulars of receipts stated in aforesaid Parts I to IV.

By Part XVI, par. 18, p. 65, that defendant Mackay operated a gambling business during the years 1936 to 1939; converted all the gains, profits and income thereof into coin or currency, and delivered same to Johnson, which

alleged delivery is contrary to the particulars of receipts stated in aforesaid Parts I to IV.

By Part XVII, par. 10, p. 69, that defendant Wait operated a gambling business during the years 1936 to 1939; converted all the gains, profits and income thereof into
211 coin or currency, and delivered same to Johnson, which alleged delivery is contrary to the particulars of receipts stated in aforesaid Parts I to IV.

By Part XVIII, par. 6, p. 71, that defendant Skidmore operated a gambling business during the years 1936 to 1939; converted all the gains, profits and income thereof into coin or currency, and delivered same to Johnson, which alleged delivery is contrary to the particulars of receipts stated in aforesaid Parts I to IV.

B.

We list below (giving Part, paragraph and page of the Bill) a stereotyped paragraph of alleged particulars, which we contend is even more general in form than the allegations of the Indictment, and leave these defendants entirely in the dark as to what they will be called on to meet; throw wide open the door for admission of evidence, and make it impossible to meet such evidence.

"All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and income derived from, or ownership of said gambling business, and (b) converted said gains, profits and income derived from said gambling business into coin or currency and delivered the same to said Johnson, all for the purpose thereby of wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade and defeat the payment of a large portion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment."

212 Said section may be found at:

Part VII, par. 33, p. 24—as to defendant Sommers;

Part VIII, par. 30, p. 34—as to defendant Creighton;

Part IX, par. 25, p. 39—as to defendant Kelly;

Part X, par. 27, p. 45—as to defendant Flanagan;

Part XI, par. 27, p. 52—as to defendant Hartigan;

Part XIII, par. 3, p. 57—as to defendant Alexander;

Part XVI, par. 18, p. 65—as to defendant Mackay;

Part XVII, par. 10, p. 69—as to defendant Wait;

Part XVIII, par. 6, p. 71—as to defendant Skidmore;

We submit, this does not approach a compliance with the Court's order. Specific exceptions to these sections appear elsewhere herein.

C.

Under this heading we submit an analysis of the alleged major income of Johnson and sources thereof set forth in the Bill of Particulars, and the act or acts charged to the aiders and abettors (giving the name) as going to make up said alleged income; the former data is shown in the left-hand column and the latter in the right, and followed by comments:

213

1936

Johnson Part I	Sommers Part VII
Item:	Item:
3. From checks cashed at the Northern Trust Company, Chicago, during January to May, inclusive, 1936, by defendant, Jack Sommers: $111,578.60	1. Cashed checks at the Northern Trust Company, Chicago, during January to May, inclusive, 1936, aggregating: $111,578.60
4. From currency exchanged at the Northern Trust Company, Chicago, and Albany Park Deposit and Exchange Company, Chicago, all during the year 1936, by defendant Jack Commers and one Downey: $148,400.00	2. Exchanged currency at the Northern Trust Company, Chicago, and at the Albany Park Deposit and Exchange, Chicago, all during the year 1936, aggregating: $148,400.00

5. From checks cashed at Albany Park Deposit and Exchange Company, Chicago, all during June to December, inclusive, 1936, by defendant Jack Sommers and one Downey: $255,401.40	3. Cashed checks at the Albany Park Deposit and Exchange, Chicago, during June to December, 1936 aggregating: $255,401.00
	Creighton
	Part VIII
6. From checks cashed and deposits made at the Mid-City National Bank of Chicago, and the I. C. State Bank of Chicago, all during the year 1936, by defendant Andrew J. Creighton and one William Foley, and one Fred Gitzen: $57,520.00	1. Cashed checks at Mid-City National Bank of Chicago, all during the year 1936, aggregating $57,520.00
	Flanagan
	Part X
7. From checks cashed at the Lawndale Currency Exchange all during the year 1936, by defendant John M. Flanagan, and one Albert Couch: $ 16,198.60	2. Cashed checks at the Lawndale Currency Exchange, Chicago, all during the year 1936, aggregating: $ 20,000.00
Total: $589,098.60	Total: $592,900.00

214 It will be observed that,—

(a) Part I, item 4, charges income to Johnson from currency exchanged by defendant Sommers and one Donwey, amount $148,400.00; whereas, in Part VII, item 2, this currency is alleged to have been exchanged by Sommers only.

(b) Part I, item 5, charges income to Johnson from checks cashed by defendant Sommers and one Downey, amount $255,401.40; whereas, in Part VII, item 3, these checks are alleged to have been cashed by Sommers only.

(c) Part I, item 6, charges income to Johnson from checks cashed and deposits made by defendant Creighton, and one William Foley and one Fred Gitzen, amount, $57,520.00; whereas, in Part VIII, item 1, this item is charged as cashed checks (not deposits) by Creighton only.

(d) Part I, item 7, charges income to Johnson from checks cashed by defendant Flanagan and one Albert Couch, amount $16,198.60; whereas, in Part X, item 2,

the cashing of these checks is charged to Flanagan only, and the amount is stated to be $20,000.00.

215 1937

Johnson	Sommers
Part II	**Part VII**
Item:	Item:
4. From checks cashed by defendant Jack Sommers at the Albany Park Deposit and Exchange, from January to August, inclusive, 1937: $623,690.56	4. Cashed checks at the Albany Park Deposit and Exchange, Chicago, all during the year 1937, aggregating: $623,690.56
5. From checks cashed and deposits made at the Mid-City National Bank of Chicago, and the I. C. State Bank of Chicago, from January 1st, to August 31st, inclusive, 1937, by defendant Andrew J. Creighton and one William Foley and one Fred Gitzen: $209,406.16	Creighton **Part VIII** 2. Cashed checks at the Mid-City National Bank of Chicago, all during the year 1937, aggregating: $116,830.46
	Sommers **Part VII**
6. From currency exchanged by defendant Jack Sommers at the Northern Trust Company, and the Albany Park Deposit and Exchange during January to August, inclusive, 1937, and at the Mid-City National Bank of Chicago, by defendant Andrew J. Creighton, from January to August, inclusive, 1937: $ 54,350.00	5. Exchanged currency at the Northern Trust Company, Chicago, and at the Albany Park Deposit and Exchange, Chicago, all during the year 1937: Not Given
Total: $887,446.72	

216 It will be observed that,—

(a) Part II, item 4, charges income to Johnson from checks cashed by defendant Sommers from January to August, inclusive, 1937, amount $623,690.56; whereas, in Part VII, item 4, charges the cashing of these checks to have been done during the entire year of 1937.

(b) Part II, item 5, charges income to Johnson from checks cashed and deposits made from January 1st to August 31st, inclusive, 1937, by defendant Creighton and one

William Foley and one Fred Gitzen, amount $209,406.16; whereas, no such act appears in particulars as to Creighton. There does appear in Part VIII, item 2, checks cashed by Creighton only during the entire year 1937, aggregating $116,890.46, which item is not shown as income in particulars as to Johnson.

(c) Part II, item 6, charges income to Johnson from currency exchanged by defendant Sommers, from January to August, 1937, and by defendant Creighton, amount $54,350.00; whereas, no such act appears in particulars as to Creighton. There is shown in Part VII, item 5, in particulars as to Sommers the charge of currency exchanged during the year 1937, but no amount given.

217 1938

Johnson	Sommers
Part III	Part VII
Item:	Item:
4. From checks cashed by defendant Jack Sommers at the Albany Park Deposit and Exchange during February 1st to July 20th, inclusive, 1938: $376,783.14	6. Cashed checks at the Albany Park Deposit and Exchange, Chicago, all during the year 1938, aggregating: $376,783.14
5. From checks cashed by defendant Jack Sommers at the Lawrence Avenue Currency Exchange during July 21st to December 31st, inclusive, 1938: $194,557.53	7(a) Cashed checks at the Lawrence Avenue Currency Exchange during July 21st to December 31st, inclusive, 1938, aggregating: $194,557.53
	Creighton
	Part VIII
6. From checks cashed and deposits made at the Mid-City National Bank of Chicago, and the I. C. State Bank of Chicago, from March 1st to December 31st, inclusive, 1938, by defendant Andrew J. Creighton and one William Foley and one Fred Gitzen: $139,334.95	3. Cashed checks at the Mid-City National Bank of Chicago, and the Washington Park Currency Exchange, Chicago, all during the year 1938, aggregating: $139,334.95

	Sommers
	Part VII
7. **From currency exchanged by the defendant Jack Sommers at the Albany Park Deposit and Exchange, Lawrence Avenue Currency Exchange, and Northern Trust Company, and by Andrew J. Creighton at the Mid-City National Bank, all during the year 1938:**	7. **Exchanged currency at the Albany Park Deposit and Exchange Co., Chicago, the Lawrence Avenue Currency Exchange, Chicago, the Mid-City National Bank of Chicago, and the Northern Trust Co., Chicago, (together with A. J. Creighton) all during the year 1938, aggregating:**
$250,000.00	**$250,000.00**
Total: $960,675.62	**Total: $960,675.62**

218 It will be observed that,—

(a) Part III, item 4, charges income to Johnson from checks cashed by defendant Sommers, February 1st to July 20, 1938, amount $376,783.14; whereas, in Part VII, item 6, charges the cashing of these checks during the entire year of 1938.

(b) Part III, item 6, charges income to Johnson from checks cashed and deposits made at Mid-City National Bank, and I. C. State Bank from March 1st to December 31, 1938, by defendant Creighton and one William Foley and one Fred Gitzen; whereas, Part VIII, item 3, particularized as to defendant Creighton as checks cashed (not deposits) at Mid-City National Bank, and Washington Park Currency Exchange, during the entire year of 1938.

(c) Part III, item 7, charges as income to Johnson from currency exchange by defendant Sommers at Albany Park Deposit and Exchange, Lawrence Avenue Currency Exchange, and Northern Trust Company, and by defendant Creighton at Mid-City National Bank, during 1938, amount $250,000.00; whereas, Part VII, item 7, charges this currency to have been exchanged at the four (4) named institutions by defendant Sommers, merely suggesting (together with A. J. Creighton). The amount as to each is not stated.

219 1939

Johnson

Part IV

Item:

4. From checks cashed and currency exchanged by defendant Jack Sommers at the Lawrence Avenue Currency Exchange, and the Northern Trust Company, from January 1st to September 30th, inclusive, 1939: $936,551.43

Sommers

Part VII

Item:

8. Exchanged currency at the Northern Trust Co., Chicago, all during the year 1939, aggregating: $100,000.00

8(a) Cashed checks and exchanged currency at the Lawrence Avenue Currency Exchange, Chicago, and the Northern Trust Co., Chicago, from January 1st, to September 30th, inclusive, 1939, aggregating: $ 936,551.43

Total: $1,036,551.43

220 It will be observed that,—

Part VII, item 8, particularizes currency exchanged by defendant Sommers at Northern Trust Company during year 1939, amount $100,000.00, which is not shown in particulars of income as to Johnson.

* * * * * * *

All of which inaccuracies, insufficiencies and contradictory statements make for extreme confusion and render it impossible for these defendants to properly prepare their defenses, which they would have been able to do had the plaintiff complied with the order of this Court with respect to the character and kind of Bill of Particulars it should supply herein.

Wherefore, these defendants, and each of them, respectfully submit that the Government has not fully and fairly complied with the order of this Court entered herein on to-wit, June 17, 1940, (as amended) as hereinabove set forth, and has furnished information of a confusing and inaccurate nature and incapable of being harmonized, and respectfully move the Court for the entry of an order or orders as follows:

(a) Directing the Government to amplify its Bill of Particulars with reference to these defendants, and each of them, by supplying the information herein indicated to have been omitted; and

221 (b) To strike from said Bill of Particulars each and every section, and parts of sections, which do not fairly comply with said order of this Court, and particularly the nine (9) sections thereof itemized herein at p. 28; and

(c) To strike from said Bill of Particulars all sections, and parts of sections, containing conclusions and arguments rather than facts and which are hereinabove specifically referred to; and

(d) In the alternative of sub-sections (a), (b) and (c), to strike the entire Bill of Particulars as not fairly meeting the requirements of the order of this Court of June 17, 1940, (as amended), nor representing a fair effort to comply therewith;

And for such other order and orders in the premises as the Court may deem appropriate.

(Sgd) William W. Smith,
Attorney for William R. Skidmore.

(Sgd) Leslie E. Salter,
Attorney for Defendant, Wm. Goldstein.

(Sgd) Edward J. Hess,
Attorney for Defendants, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey.

(For the convenience of the Court there is attached hereto an index to said Bill of Particulars, giving the parts and pages thereof.)

222 Index to Bill of Particulars.

Filed July 22, 1940.

223 And on, to wit, the 22nd day of July, A. D. 1940, came William R. Johnson by his attorneys and filed in the Clerk's office of said Court a Motion for a More Specific Bill of Particulars in words and figures following, to wit:

224 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

MOTION OF DEFENDANT, WILLIAM R. JOHNSON, FOR A MORE SPECIFIC BILL OF PARTICULARS.

Now comes the defendant, William R. Johnson, by George F. Callaghen, his attorney, and respectfully moves the Court to require the United States Attorney to furnish to this defendant a more specific bill of particulars, and in support of said motion shows unto the Court:

A. That he is not advised, is not aware of, and is wholly unable by reason of the vagueness and indefiniteness and the lack of information of the charges laid against him in said indictment and in the bill of particulars heretofore filed, to prepare and defend himself against said indictment and each count thereof, and that unless he be apprised by a more specific bill of particulars of the allegations and charges against him in apt time prior to the trial of said cause, he will suffer irreparable harm and injury, will be subjected to and surprised by evidence sought to be introduced by the United States of America upon the trial of said cause, and will be unable to meet or cope with unexpected evidence. The defendant, therefore, files this petition for a further and more specific bill of particulars.

225 B. On June 17, 1940, an order was entered in this cause directing the said United States Attorney to furnish to the defendant, Johnson:

1. An itemization as to the source, time of receipt and the amount of money derived, had and received by the defendant, William R. Johnson, comprising the figures and amounts stated to be the gross income of the defendant, William R. Johnson, in Counts 1, 2, 3 and 4 of the indictment, to wit:

$607,399.48 as set forth in Count 1 of the indictment.
$880,949.94 as set forth in Count 2 of the indictment.
$959,908.28 as set forth in Count 3 of the indictment.
$932,571.96 as set forth in Count 4 of the indictment.

2. An itemization and description as to what books and records of the defendant, William R. Johnson, were concealed and caused to be concealed, as charged in Counts 1, 2, 3 and 4 of the indictment.

C. The bill of particulars heretofore filed is not a compliance with the said order for the following reasons:

1. It is vague, indefinite, uncertain and evasive.

2. It does not set forth the itemization required by said order nor the source, time of receipt and amount of money derived, had and received by the defendant, Johnson, with the particularity required by said order.

3. The said bill of particulars contains various statements and figures which are inconsistent and repugnant.

4. Any attempted analysis of the facts and figures contained therein leads only to hopeless confusion and leaves the defendant in a dilemma as to what is contended was taxable income.

226 D. For further ground of his motion the defendant shows to the Court the following insufficiencies and vague allegations of said bill of particulars.

Part I.

(Year 1936)

1. Item 3, page 1, fails to specify the time of receipt or the amount of any of the checks mentioned therein, and the amount of $111,578.60 does not constitute an itemization as required in the order of June 17, 1940.

2. Item 4, page 2, fails to specify the time of receipt and an itemization of the currency exchanged at the two banking institutions mentioned therein, and fails to specify

an itemization of the amount each of the two persons mentioned therein exchanged at said respective banking institutions, and the gross figure of $148,400.00 does not constitute an itemization as required in the said order.

3. Item 5, page 2, fails to specify the time of receipt and the amount of any check mentioned therein and the amount and itemization of the checks cashed by the two persons named therein. Further, the sum of $255,401.40 does not constitute an itemization as required in the said order.

4. Item 6, page 2, fails to specify what portion of the amount of $57,520.00 constitutes checks cashed and what portion is deposits made, and fails to specify with respect thereto the specific amounts handled by the two banking institutions named therein, and fails to particularize as to each of the three individual persons named therein.
227 This said item does not constitute an itemization within the meaning and intendment of the order heretofore entered.

5. Item 7, page 2, fails to specify the time of receipt and the amount of any check mentioned therein and the amount and itemization of the checks cashed by the two persons named therein. Further, the sum of $16,198.60 does not constitute an itemization as required in the said order.

6. Item 8, page 2, the listing of, to wit, 22 alleged gambling establishments on pages 2 and 3 does not constitute an itemization as to the source of the amount of money had and received by the defendant, Johnson, during the year 1936 as required by said order.

Part II.

(Year 1937)

1. Item 4, page 4, fails to specify the time of receipt or the amount of any of the checks mentioned therein, and the amount of $623,690.56 does not constitute an itemization as to the source, time of receipt and amount of money had and received by the defendant, Johnson, as required by said order.

2. Item 5, page 4, fails to specify and particularize as to the amount of checks cashed and deposits made respectively at the two banking institutions mentioned therein; fails to specify the source, time of receipt and the amount

of the respective checks and deposits, and fails to specify in what amount checks were cashed and deposits made by the three respective persons named therein. The amount of $209,406.16 does not constitute an itemization as
228 to the source, time of receipt and the amount of money had and received by the defendant, Johnson, in accordance with the said order of June 17, 1940.

3. Item 6, page 4, fails to specify the time of receipt and the specific amounts of currency exchanged by Jack Sommers at the two banking institutions named therein, and fails to specify the time of receipt and the specific amounts of the currency exchanged at the Mid-City National Bank by Andrew Creighton during the period mentioned therein. Said item does not constitute an itemization as to the source, time of receipt and amount of money received by the defendant, Johnson, as required by said order.

4. Item 7, page 5, the listing of, to wit, 22 alleged gambling establishments on page 5 does not constitute an itemization as to the source of the amount of money had and received by the defendant, Johnson, during the year 1937 as required by said order.

Part III.

(Year 1938)

1. Item 4, page 6, fails to specify the time of receipt or the amount of any of the checks mentioned therein, and said lump figure of $376,783.14 does not constitute an itemization as to the source, time of receipt and amount of money received by the defendant, Johnson, as required by said order of June 17, 1940.

2. Item 5, page 6, fails to specify the time of receipt or the amount of any of the checks mentioned therein, and said lump figure of $194,557.53 does not constitute an itemization as to the source, time of receipt and amount of
229 money received by the defendant, Johnson, as required by said order of June 17, 1940.

3. Item 6, page 6, fails to specify what part of the figure therein named constituted checks cashed and what part deposits made at the two respective banking institutions named therein, and the specific checks cashed and deposits made respectively by the three persons named therein. Said item and the figure of $139,334.95 mentioned therein does not constitute the itemization required by the order of June 17, 1940.

4. Item 7, page 6, fails to specify the various and respective amounts of currency exchanged by the defendant, Sommers, at the three respective banking institutions named therein, and fails to specify and itemize the time of receipt and the respective amounts exchanged by the two persons mentioned therein constituting the gross figure of $250,000.00. Said item is not an itemization as to the source, time of receipt and amount of money had and received by the defendant, Johnson, as required in the said order of June 17, 1940.

5. Item 6, page 6, the listing of, to wit, 22 alleged gambling establishments on page 7 does not constitute an itemization as to the source of the amount of money had and received by the defendant, Johnson, during the year 1938 as required by said order.

230 Part IV.

(Year 1939)

1. Item 4, page 8, fails to specify and distinguish the portion of the figure mentioned therein as checks cashed and currency exchanged, and fails to specify and itemize the amount of checks cashed and currency exchanged by Jack Sommers at the two respective banking institutions mentioned therein. The gross amount of $936,551.43 mentioned in said item does not constitute an itemization as to the source, time of receipt and the amount of money had and received by the defendant, Johnson, in accordance with the order of June 17, 1940.

2. Item 5, page 8, the listing of, to wit, 22 alleged gambling establishments on pages 8 and 9 does not constitute an itemization as to the source of the amount of money had and received by the defendant, Johnson, during the year 1939 as required by said order.

Part V.

1. Said items 1 to 9, inclusive, do not constitute an itemization and description of the books and records of the defendant, William R. Johnson, as required in the order of June 17, 1940.

The defendant hereby incorporates and makes a part hereof, as though fully set forth herein, the exceptions of the defendants, William R. Skidmore, William Goldstein,

Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. MacKay, Stuart Solomon Brown and Bernice Downey to the Government's bill of particulars filed simultaneously herewith.

231 This defendant further shows that by the mingling together of the large amounts in said bill of particulars as hereinabove set forth, and the generalization as to persons, dates, and banking institutions, this defendant is confused, perplexed and is unable to properly prepare his defense to the indictment herein.

This defendant further represents that he cannot receive a fair and impartial trial and cannot prepare and submit defenses to each and all of the charges against him unless he is furnished with a more specific bill of particulars, and that he has no means of obtaining such information or any of such information except through and by means of a more specific and definite bill of particulars.

This defendant further alleges that unless the prosecution is directed to furnish a more specific bill of particulars, there will be no means available now or hereafter to identify the offenses charged in the indictment and each count thereof and, for want of such means, said indictment furnishes no protection to this defendant against other and further indictments for the same alleged offenses, nor can any verdict entered upon said indictment be pleaded in bar of further prosecutions for the same alleged offenses.

Wherefore, your petitioner prays that an order be entered herein requiring the United States Attorney to furnish to your petitioner, within a reasonable time to be fixed by the Court, a further and more specific bill of particulars of all and every of the matters alleged in said indictment, and, more specifically, a bill of par-

232 ticulars in compliance and accordance with the order of this Court heretofore entered on June 17, 1940.

And your petitioner will ever pray.

(Sgd.) William R. Johnson,
Defendant,

By (Sgd.) George F. Callaghan,
Attorney for Defendant.

Entered July 24, 1940.

233 And afterwards, to wit, on the 24th day of July, A. D. 1940, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears the following entry, to wit:

234 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

Wednesday, July 24, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

Comes now the United States by the United States Attorney come also the defendants William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey by their attorneys and thereupon this cause coming on to be heard upon the motion of William R. Johnson for a more specific bill of particulars after arguments of counsel and due deliberation by the Court the said motion is overruled and denied to which ruling of the Court the defendant by his attorney duly excepts and thereupon this cause coming on further to be heard on the exceptions of defendants, William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey to the Government's bill of particulars after arguments of counsel and due deliberation by the Court said exceptions are overruled to which ruling of the Court the defendants by their attorneys duly except.

235 And afterwards, to wit, on the 13th day of August, A. D. 1940, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge appears the following entry, to wit:

236 IN THE DISTRICT COURT OF THE UNITED STATES. Entered Aug. 13, 1940.
• • (Caption—32168) • •

Tuesday, August 13, A. D. 1940.

Present: Honorable William H. Holly, Judge.

On motion of the United States Attorney it is Ordered that leave be and the same is hereby given to file instanter a supplement to the bill of particulars heretofore filed herein.

237 And on, to wit, the 13th day of August, A. D. 1940. came the United States by their attorneys and filed in the Clerk's office of said Court Supplement to the Bill of Particulars in words and figures following, to wit:

238 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA. Filed Aug. 13, 1940.
• • (Caption—32168) • •

SUPPLEMENT TO THE BILL OF PARTICULARS.

Now comes the United States of America, by William J. Campbell, United States Attorney for the Northern District of Illinois, and files this, its Supplement to the Bill of Particulars, and hereby furnishes to the defendants the following additional information:

1) With reference to Parts I, II, III, IV, V and VI of the original Bill of Particulars, wherein are set forth the names of certain gambling establishments, is hereby added the following:

3332 N. Milwaukee Avenue
3946 School Street
2153 S. Kedzie Avenue
3209 W. Ogden Avenue
400 Club, Desplaines and Madison Streets, Forest Park,

and divers other gambling establishments, the exact names and addresses of which cannot now be stated.

2) As to Part IV of the original Bill of Particulars, as to defendant William R. Johnson, under Count IV of

the indictment for the calendar year 1939, to the itemization of income as set forth in the original Bill of Particulars, is hereby added items of increase as follows:

239 From currency exchanged at the Northern Trust Company during the year 1939 by defendant Jack Sommers $100,000

From currency exchanged and checks cashed at the Portage Park Currency Exchange, Chicago, by Reginald E. Mackay, during the year 1939 ..... $ 40,600

3) As to Part I of the original Bill of Particulars as to defendant William R. Johnson, to the itemization of gross income as set out in said Part I of said original Bill of Particulars, is hereby added the following:

From currency exchanged at the Liberty National Bank, Chicago, by defendant John Flanagan, during the year 1936 ..... $ 50,000

4) In Part X, of the original Bill of Particulars, as to defendants John M. Flanagan, being a particularization of other and further acts and the time and place thereof, is hereby added the following:

Said defendant exchanged currency at the Liberty National Bank, Chicago, during the year 1936, in an amount aggregating .. $ 50,000

5) As to Part XVI of the original Bill of Particulars, as to defendant Reginald E. Mackay, being a particularization of other and further acts and the time and places thereof, is hereby added the following:

Said defendant exchanged currency and cashed checks at the Portage Park Currency Exchange, Chicago, during the year 1939, in the aggregate total sum of ..... $ 40,600

(Sgd.) William J. Campbell,
William J. Campbell,
United States Attorney.

240 And afterwards, to wit, on the 27th day of August, A. D. 1940, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge appears the following entry, to wit: Entered Aug. 27, 1940.

241 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

Tuesday, August 27, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This cause being called for trial comes the United States by the United States Attorney come also the defendants William R. Johnson alias W. R. Johnson alias Bill Johnson, William R. Skidmore alias W. R. Skidmore alias Billy Skidmore, William Goldstein alias Bill Goldstean, Andrew J. Creighton alias A. J. Creighton alias Red Creighton, Jack Sommers alias J. Sommers, Edward Wait alias Ed Wait, James A. Hartigan alias J. A. Hartigan alias Jimmie Hartigan alias J. A. Hart, John M. Flanagan alias J. Flanagan, Orrie Alexander, William P. Kelly alias Bill Kelly, Reginald E. Mackay alias Reg Mackay, Stuart Solomon Brown alias S. S. Brown and Bernice Downey in their own proper persons whereupon the defendants William R. Skidmore and William R. Johnson by their attorneys enter their motions for a continuance which motion is denied and on motion of the United States Attorney it is

Ordered this cause be and the same is hereby dismissed as to the defendants William R. Skidmore, William Goldstein, Orrie Alexander, and Bernice Downey.

On motion of Edward A. Fisher, Esquire, it is ordered leave be and the same is hereby given to withdraw his appearance for the defendant Stuart Solomon Brown thereupon this cause coming on for trial as to the defendants

William R. Johnson, Andrew J. Creighton, Jack Som-
242 mers, Edward Wait, James A. Hartigan, John M. Flanagan, William P. Kelly, Reginald E. Mackay and Stuart Solomon Brown and the said defendants having heretofore interposed pleas of not guilty to the indictment filed herein against them put themselves upon the country and it is ordered by the Court that the defendants' Chal-

lenges to Array be and the same is hereby overruled to which ruling of the Court the defendants by their attorneys duly except it is ordered that a Jury come whereupon comes a Jury of true and lawful men and women to wit:

Mrs. Paul Van Auken also known as Mrs. Agnes Van Auken

Warren L. Fillingham	Morton L. Pereiza
Mrs. Margaret N. Brown	Otto Papke
Mrs. Mary F. Brevillier	Glen A. Esh
N. P. Eipers	Richard L. Rees
Philip R. Ames	George M. Inman

Mrs. William B. Cobb also known as Mrs. Ruth Cobb

Mrs. Bertha Robinson George and Henry L. Hagenbring who were duly elected, tried and sworn well and truly to try the issues joined herein and a true verdict render according to law and the evidence and the usual hour of adjournment having arrived it is ordered this cause be and the same is hereby adjourned to August 28, A. D. 1940, 10:00 A. M.

243 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

ORDER.

The Court finds that this court is about to try the defendants in this cause and that in the opinion of the Judge of this court the trial is likely to be a protracted one and that two additional jurors, to be known as alternate jurors, should be called;

It Is Therefore Ordered that two additional jurors, to be known as alternate jurors, be called at this time which is immediately after the jury has been empaneled and sworn.

Barnes,
Judge.

Entered Aug. 27, 1940.

244 And on, to wit, the 25th day of September, A. D. 1940, came the defendants by their attorneys and filed in the Clerk's office of said Court certain Motion for Finding of Not Guilty in words and figures following, to wit: Filed Sept. 25, 1940.

245 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—32168) • •

MOTION.

And now at the close of all evidence offered and admitted on behalf of the Government, come the defendants, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, William P. Kelly, Reginald E. Mackay and Stuart Solomon Brown, respectively, and on behalf of each individually, by Edward J. Hess and George F. Callaghan, their attorneys, and move the Court to instruct the jury to find said defendants, and each of them respectively, not guilty.

This motion is made on behalf of each of said defendants individually as to each of Counts 1, 2, 3, 4 and 5 of the indictment respectively.

Edward J. Hess,
George F. Callaghan,
Attorneys for said Defendants.

Denied.

246 And on, to wit, the 25th day of September, A. D. 1940, came the defendants by their attorneys and filed in the Clerk's office of said Court certain Motion to Elect in words and figures following, to wit: Filed Sept. 25, 1940.

247 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—32168) • •

MOTION.

Now come the defendants, William R. Johnson, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Wm. P. Kelly, Reginald Mackay and Stuart S. Brown, severally, at the close of the

evidence for the Government, and move the Court to require the Government to elect:

1. Whether it shall proceed upon Counts One to Four, inclusive, of the indictment, or upon Count Five of the indictment.

2. Upon which Counts of the indictment it will proceed.

William R. Johnson,
Andrew J. Creighton,
Jack Sommers,
Edward Wait,
James A. Hartigan,
John M. Flanagan,
Wm. P. Kelly,
Reginald Mackay,
Stuart S. Brown,
By Floyd E. Thompson,
Edward J. Hess,
George F. Callaghan,
Their Attorneys.

(Denied.)

Filed Sept. 25, 1940.

248 And on, to wit, the 25th day of September, A. D. 1940, came the defendant Johnson by his attorneys and filed in the Clerk's office of said Court Motion for Directed Verdict of Not Guilty in words and figures following, to wit:

249 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

MOTION OF DEFENDANT, WILLIAM R. JOHNSON, FOR DIRECTED VERDICT OF NOT GUILTY.

And now comes William R. Johnson, one of defendants, at the close of the evidence for the prosecution, and moves that the Court instruct the jury to find him not guilty.

And now again comes said defendant and specifically moves that the Court instruct the jury to find him not guilty of the offense charged in Count One of the indictment.

And now again comes said defendant and specifically moves that the Court instruct the jury to find him not guilty of the offense charged in Count Two of the indictment.

And now again comes said defendant and specifically

moves that the Court instruct the jury to find him not guilty of the offense charged in Count Three of the indictment.

And now again comes said defendant and specifically moves that the Court instruct the jury to find him not guilty of the offense charged in Count Four of the indictment.

250 And now again comes said defendant and specifically moves that the Court instruct the jury to find him not guilty of the offense charged in Count Five of the indictment.

William R. Johnson,
Defendant.

Floyd E. Thompson,
Attorney.

Denied.

251 And afterwards, to wit, on the 25th day of September, A. D. 1940, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit: Filed Sept. 25, 1940.

252 In the District Court of the United States.

• • (Caption—32168) • •

Wednesday, September 25, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This day again comes the United States by the United States Attorney come also the defendants William R. Johnson, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, William P. Kelly, Reginald E. Mackay and Stuart Solomon Brown in their own proper persons and the jury heretofore empaneled for the trial of said cause also come and thereupon at close of the Government's evidence the defendant William R. Johnson by his attorney enters his motion for a finding of not guilty as to the indictment and as to each count thereof and the defendants Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, William P. Kelly, Reginald E. Mackay and Stuart Solomon Brown respectively and individually enter their motions

for finding of not guilty as to each count of the indictment after arguments of counsel said motions are overruled and denied to which ruling of the Court the defendants by their attorneys duly except whereupon the defendants by their attorneys enter their motions that the Government elect whether it shall proceed upon counts 1 to 4 inclusive or upon count 5 of the indictment and upon which counts of the indictment it will proceed after arguments of counsel said motion is denied to which ruling of the Court the defendants by their attorneys duly except and it is further ordered the trial of said cause be and the same is hereby continued to September 26, 1940 at 10 A. M.

Filed Oct. 10, 1940.

253 And on, to wit, the 10th day of October, A. D. 1940, came the defendants by their attorneys and filed in the Clerk's office of said Court Motion to Elect in words and figures following, to wit:

254 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

MOTION.

Now come the defendants, William R. Johnson, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Wm. P. Kelly, Reginald Mackay and Stuart S. Brown, at the close of all of the evidence, and severally renew their motion to require the Government to elect upon which Count of the indictment it will proceed, and in support of said motion show unto the Court:

1. That the defendant aiders and abettors are by Count One of the indictment charged with having aided and abetted the defendant, William R. Johnson, in the commission of the offense described in said First Count "during the calendar year of 1936 and up to March 15, 1937, and continuously thereafter up to and including the date of the filing of this indictment."

2. That the defendant aiders and abettors are by Count Two of the indictment charged with having aided and abetted the defendant, William R. Johnson, in the commission of the offense described in said Second Count

255 "during the calendar year of 1937 and up to March 15, 1938, and continuously thereafter up to and including the date of the filing of this indictment."

3. That the defendant aiders and abettors are by Count Three of the indictment charged with having aided and abetted the defendant, William R. Johnson, in the commission of the offense described in said Third Count "during the calendar year of 1938 and up to March 15, 1939, and continuously thereafter up to and including the date of the filing of this indictment."

4. That the defendant aiders and abettors are by Count Four of the indictment charged with having aided and abetted the defendant, William R. Johnson, in the commission of the offense described in said Fourth Count "during the calendar year of 1939 and up to March 15, 1940, and continuously thereafter up to and including the date of the filing of this indictment."

5. That it is charged in the Fifth Count of the indictment that "from January 1, 1936, and for a long time prior thereto and up to and including the date of the filing of this indictment" the defendants did conspire to defraud the United States of income taxes which should become due and which did in fact become due the United States from the principal defendant, William R. Johnson, for the calendar years 1936, 1937, 1938 and 1939.

6. That in and by said indictment it is attempted to charge that these defendants were engaged in five separate, several, independent conspiracies, all existing throughout the same period of time.

256

7. That the proof offered in support of each Count in the indictment is the same.

8. That the proof offered to support the charges contained in Counts One to Four, inclusive, of the indictment, is the same proof offered and received in support of the charge contained in the Fifth Count of the indictment.

Wm. R. Johnson,
Andrew Creighton,
Jack Sommers,
Edward Wait,
James Hartigan,
John Flanagan,
Reginald Mackay,
Stuart S. Brown,
Wm. P. Kelly,

Defendants.

Floyd Thompson,
Edward Wait,
George F. Callaghan,
Attorneys for Defendants.

Denied.

Filed Oct. 10, 1940. 257 And on, to wit, the 10th day of October, A. D. 1940, came the defendants by their attorneys and filed in the Clerk's office of said Court Motion for Directed Verdict of Not Guilty in words and figures following, to wit:

258 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—32168) * *

MOTION OF DEFENDANTS, ANDREW J. CREIGHTON, JACK SOMMERS, EDWARD WAIT, JAMES A. HARTIGAN, JOHN M. FLANAGAN, WM. P. KELLY, REGINALD MACKAY AND STUART S. BROWN, FOR DIRECTED VERDICT OF NOT GUILTY.

And now come Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Wm. P. Kelly, Reginald Mackay and Stuart S. Brown, defendants herein, at the close of all the evidence, and severally move that the Court instruct the Jury to find them, and each of them, respectively, not guilty.

And now again come said defendants and severally specifically move that the Court instruct the jury to find each of them, respectively, not guilty of the offense charged in Count One of the indictment.

And now again come said defendants and severally specifically move that the Court instruct the jury to find each of them, respectively, not guilty of the offense charged in Count Two of the indictment.

And now again come said defendants and severally specifically move that the Court instruct the jury to find
259 each of them, respectively, not guilty of the offense charged in Count Three of the indictment.

And now again come said defendants and severally specifically move that the Court instruct the jury to find each of them, respectively, not guilty of the offense charged in Count Four of the indictment.

And now again come said defendants and severally specifically move that the Court instruct the jury to find each

of them, respectively, not guilty of the offense charged in Count Five of the indictment.

Andrew J. Creighton,
Jack Sommers,
Edward Wait,
James A. Hartigan,
John M. Flanagan,
William P. Kelly,
Reginald Mackay,
Stuart S. Brown,
Defendants.

Edward J. Hess,
George F. Callaghan,
Attorneys for Defendants.
Denied.

260 And afterwards, to wit, on the 10th day of October, A. D. 1940, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit: Entered Oct. 10, 1940.

261 In the District Court of the United States.
• • (Caption—32168) • •

Thursday, October 10, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This day again comes the United States by the United States attorney come also the defendants William R. Johnson, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly, Stuart Solomon Brown, Andrew J. Creighton, Edward Wait, and Reginald E. Mackay in their own proper persons, and the jury heretofore empaneled for the trial of said cause also come and thereupon at the close of all the evidence the defendants' by their attorneys enter their motion to withdraw a juror and declare a mistrial which motion is denied to which ruling of the Court the defendants by their attorneys duly except whereupon each defendant severally by his attorney enters herein his motion for a directed verdict of not guilty as to each count of the indictment generally which motion is denied to which ruling of the Court each defendant by his attorney duly

excepts whereupon the defendants by their attorneys enter their motion that the Government elect upon which count of the indictment it will proceed which motion is denied to which ruling of the Court each defendant by his attorney duly excepts, and the jury having heard the evidence by the parties adduced and arguments of counsel in part and the usual hour of adjournment having arrived it is ordered this cause be and the same is hereby continued for further hearing to October 11th, A. D. 1940 at 11:00 A. M.

Entered Oct. 12, 1940.

262 And afterwards, to wit, on the 12th day of October, A. D. 1940, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entries, to wit:

263 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

Saturday, October 12, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This day again comes the United States by the United States Attorney come also the defendants William R. Johnson alias W. R. Johnson alias Bill Johnson, Jack Sommers alias J. Sommers, James A. Hartigan alias J. A. Hartigan alias Jimmie Hartigan alias J. A. Hart, John M. Flanagan alias J. Flanagan, William P. Kelly alias Bill Kelly, Stuart Solomon Brown alias S. S. Brown, Andrew J. Creighton alias A. J. Creighton alias Red Creighton, Edward Wait alias Ed Wait and Reginald E. Mackay alias Reg Mackay in their own proper persons and the Jury heretofore empaneled for the trial of said cause also come and render their verdict and upon their oath do say "We the Jury find the defendants William R. Johnson alias W. R. Johnson alias Bill Johnson, Jack Sommers alias J. Sommers, James A. Hartigan alias J. A. Hartigan alias Jimmie Hartigan alias J. A. Hart, John M. Flanagan alias J. Flanagan and William P. Kelly alias Bill Kelly guilty as charged in the 1st 2nd 3rd 4th and 5th counts in the indictment and "We find the defendant Stuart Solomon Brown alias S. S. Brown guilty as charged in the 3rd 4th and 5th counts and not guilty as charged in the first and second counts of the in-

dictment" and "We the Jury find the defendants Andrew
J. Creighton alias A. J. Creighton alias Red Creighton,
264 Edward Wait alias Ed Wait and Reginald E. Mackay
alias Reg Mackay not guilty as charged in the 1st 2nd 3rd 4th and 5th counts of the indictment" and thereupon on motion of the defendants' attorneys that the jury be polled the Clerk inquired of each and every juror, "was this and is this your true verdict" to which inquiry each and every juror replied in the affirmative whereupon the defendants William R. Johnson alias W. R. Johnson alias Bill Johnson, Jack Sommers alias J. Sommers, James A. Hartigan alias J. A. Hartigan alias Jimmie Hartigan alias J. A. Hart, John M. Flanagan alias J. Flanagan and William P. Kelly alias Bill Kelly by their attorneys enter herein their motion for a new trial in said cause which motion is entered and continued to October 17, A. D. 1940 it is
Ordered by the Court that the defendants Andrew J. Creighton alias A. J. Creighton alias Red Creighton, Edward Wait alias Ed Wait and Reginald E. Mackay alias Reg Mackay be and the same are hereby discharged.

265 In the District Court of the United States. Entered Oct. 12, 1940.
* * (Caption—32168) * *

Saturday, October 12, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This day comes the defendant Stuart Solomon Brown alias S. S. Brown by his attorney and enters herein his motion for a new trial in said cause which motion is entered and continued to October 17, A. D. 1940.

266 And afterwards, to wit, on the 23rd day of October, A. D. 1940, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entries, to wit:

Entered Oct. 23, 1940. 267 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

United States of America
vs.
William R. Johnson, alias W. R. Johnson, alias "Bill" Johnson. } No. 32168.

This day comes the United States by the United States Attorney and comes also the defendant William R. Johnson, alias W. R. Johnson, alias "Bill" Johnson, in his own proper person and by his counsel and thereupon this cause coming on to be heard upon the said defendant's motion heretofore entered herein for a new trial, after arguments of counsel and due deliberation of the Court said motion is overruled and a new trial denied to which ruling the defendant by his counsel duly excepts.

Whereupon the said defendant by his counsel enters herein his motion in arrest of judgment as to each count of the indictment which motion is also overruled and denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the United States by the United States Attorney enters herein its motion for judgment on the verdict and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence should not now be pronounced it is therefore considered and

Ordered by the Court and is the sentence and judgment of the Court upon the verdict of guilty heretofore rendered by the Jury herein that the defendant William R. Johnson, alias W. R. Johnson, alias "Bill" Johnson be committed to the custody of the Attorney General to be confined and imprisoned in a United States Penitentiary for and during a period of Five (5) Years on each of the first, second, third and fourth counts of the indictment and to be confined in a United States Penitentiary for and during a period of Two (2) Years on the fifth count of the indictment and

268 besides forfeit and pay to the United States of America a fine in the sum of Ten Thousand and no/100

dollars ($10,000.00) on each of the first, second, third, fourth and fifth counts of the indictment and it is further

Ordered that the terms of imprisonment on the second, third, fourth and fifth counts shall run concurrently with the term of imprisonment on the first count and that the payment of the fine in the amount of Ten Thousand Dollars ($10,000.00) shall discharge all fines. To which ruling and judgment of Court the defendant duly excepts and on motion of the defendant it is further

Ordered that the execution of sentence herein be and it is hereby stayed until the 30th day of October, 1940, 10:00 o'clock A. M., and that the bond heretofore filed herein by said defendant remain in full force and effect.

Barnes,
October 23, 1940. *Judge, United States District Court.*

269 In the District Court of the United States, Entered Oct. 23, 1940.

For the Northern District of Illinois,

Eastern Division.

United States of America
vs.
Jack Sommers, alias J. Sommers } No. 32168.

This day comes the United States by the United States Attorney and comes also the defendant Jack Sommers, alias J. Sommers, in his own proper person and by his counsel and thereupon this cause coming on to be heard upon the said defendant's motion heretofore entered herein for a new trial after arguments of counsel and due deliberation of the Court said motion is overruled and a new trial denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the said defendant by his counsel enters herein his motion in arrest of judgment as to each count of the indictment which motion is also overruled and denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the United States by the United States Attorney enters herein its motion for judgment on the verdict and the defendant being asked by the Court if he has

anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence should not now be pronounced it is therefore considered and

Ordered by the Court and is the sentence and judgment of the Court upon the verdict of guilty heretofore rendered by the Jury herein that the defendant Jack Sommers alias J. Sommers be committed to the custody of the Attorney General to be confined and imprisoned in a United States Penitentiary for and during a period of Four (4) Years on each of the first, second, third and fourth counts of the indictment and to be confined in a United States Penitentiary for and during a period of Two (2) Years on the fifth count of the indictment and besides forfeit and pay to the United States of America a fine in the sum of Eight Thousand and no/100 ($8,000.00) on each of the
270 first, second, third, fourth and fifth counts of the indictment and it is further

Ordered that the terms of imprisonment on the second, third, fourth and fifth counts shall run concurrently with the term of imprisonment on the first count and that the payment of one fine in the amount of Eight Thousand Dollars ($8,000.00) shall discharge all fines. To which ruling and judgment of the Court the defendant duly excepts and on motion of the defendant it is further

Ordered that the execution of sentence herein be and it is hereby stayed until the 30th day of October, 1940, 10:00 o'clock A. M. and that the bond heretofore filed herein by said defendant remain in full force and effect.

Barnes,
Judge, United States District Court.

October 23, 1940.

271 IN THE DISTRICT COURT OF THE UNITED STATES, Entered Oct. 23, 1940.

For the Northern District of Illinois,

Eastern Division.

United States of America
vs.
James A. Hartigan, alias J. A. Hartigan, alias Jimmie Hartigan, alias J. A. Hart } No. 32168.

This day comes the United States by the United States Attorney and comes also the defendant James A. Hartigan, alias J. A. Hartigan, alias Jimmie Hartigan, alias J. A. Hart, in his own proper person and by his counsel and thereupon this cause coming on to be heard upon the said defendant's motion heretofore entered herein for a new trial, after arguments of counsel and due deliberation of the Court said motion is overruled and a new trial denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the said defendant by his counsel enters herein his motion in arrest of judgment as to each count of the indictment which motion is also overruled and denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the United States by the United States Attorney enters herein its motion for judgment on the verdict and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence should not now be pronounced it is therefore considered and

Ordered by the Court and is the sentence and judgment of the Court upon the verdict of guilty heretofore rendered by the Jury herein that the defendant James A. Hartigan, alias J. A. Hartigan, alias Jimmie Hartigan, alias J. A. Hart be committed to the custody of the Attorney General to be confined and imprisoned in a United States Penitentiary for and during a period of Three (3) Years on each of the first, second, third, and fourth counts of the
272 indictment and to be confined in a United States Penitentiary for and during a period of Two (2) Years on the fifth Count of the indictment and besides forfeit and

pay to the United States of America a fine in the sum of Six Thousand and no/100 Dollars ($6,000.00) on each of the first, second, third, fourth and fifth counts of the indictment and it is further

Ordered that the terms of imprisonment on the second, third, fourth and fifth counts shall run concurrently with the term of imprisonment on the first count and that the payment of one fine in the amount of Six Thousand Dollars ($6,000.00) shall discharge all fines. To wrich ruling and judgment of the Court the defendant duly excepts and on motion of the defendant is further

Ordered that the execution of sentence herein be and it is hereby stayed until the 30th day of October, 1940, 10:00 o'clock A. M. and that the bond heretofore filed herein by said defendant remain in full force and effect.

Barnes,
Judge, United States District Court.

October 23, 1940.

Entered Oct 23, 1940.

273 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

United States of America
vs.
John M. Flanagan, alias J. Flanagan } No. 32168.

This day comes the United States by the United States Attorney and comes also the defendant John M. Flanagan alias J. Flanagan, in his own proper person and by his counsel and thereupon this cause coming on to be heard upon the said defendant's motion heretofore entered herein for a new trial, after arguments of counsel and due deliberation of the Court said motion is overruled and a new trial denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the said defendant by his counsel enters herein his motion in arrest of judgment as to each count of the indictment which motion is also overruled and denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the United States by the United States Attorney enters herein its motion for judgment on the verdict and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence should not now be pronounced it is therefore considered and

Ordered by the Court and is the sentence and judgment of the Court upon the verdict of guilty heretofore rendered by the Jury herein that the defendant John M. Flanagan, alias J. Flanagan be committed to the custody of the Attorney General to be confined and imprisoned in a United States Penitentiary for and during a period of Four (4) Years on each of the first, second, third and fourth counts of the indictment and to be confined in a United States Penitentiary for and during a period of Two (2) Years on the fifth count of the indictment and besides forfeit
274 and pay to the United States of America a fine in the sum of Eight Thousand and no/100 Dollars ($8,000.00) on each of the first, second, third, fourth and fifth counts of the indictment and it is further

Ordered that the terms of imprisonment on the second, third, fourth and fifth counts shall run concurrently with the term of imprisonment on the first count and that the payment of one fine in the amount of Eight Thousand Dollars ($8,000.00) shall discharge all fines. To which ruling and judgment of the Court the defendant duly excepts and on motion of the defendant it is further

Ordered that the execution of sentence herein be and it is hereby stayed until the 30th day of October, 1940, 10:00 o'clock A. M. and that the bond heretofore filed herein by said defendant remain in full force and effect.

Barnes,
Judge, United States District Court.

October 23, 1940.

Entered Oct. 23, 1940. 275 IN THE DISTRICT COURT OF THE UNITED STATES.

For the Northern District of Illinois,

Eastern Division.

United States of America
vs.
William P. Kelly, alias Bill Kelly } No. 32168.

This day comes the United States by the United States Attorney and comes also the defendant William P. Kelly, alias Bill Kelly, in his own proper person and by his counsel and thereupon this cause coming on to be heard upon the said defendant's motion heretofore entered herein for a new trial, after arguments of counsel and due deliberation of the Court said motion is overruled and a new trial denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the said defendant by his counsel enters herein his motion in arrest of judgment as to each count of the indictment which motion is also overruled and denied. To which ruling the defendant by his counsel duly excepts

Whereupon the United States by the United States Attorney enters herein its motion for judgment on the verdict and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence should not now be pronounced it is therefore considered and

Ordered by the Court and is the sentence and judgment of the Court upon the verdict of guilty heretofore rendered by the Jury herein that the defendant William P. Kelly, alias Bill Kelly be committed to the custody of the Attorney General to be confined and imprisoned in a United States Penitentiary for and during a period of Four (4) Years on each of the first, second, third, and fourth counts of the indictment and to be confined in a United States Penitentiary for and during a period of Two (2) Years on
276 the fifth count of the indictment and besides forfeit and pay to the United States of America a fine in the sum of Eight Thousand and no/100 Dollars ($8,000.00) on

each of the first, second, third, fourth and fifth counts of the indictment and it is further

Ordered that the terms of imprisonment on the second, third, fourth and fifth counts shall run concurrently with the term of imprisonment on the first count and that the payment of one fine in the amount of Eight Thousand Dollars ($8,000.00) shall discharge all fines. To which ruling and judgment of the Court the defendant duly excepts and on motion of the defendant it is further

Ordered that the execution of sentence herein be and it is hereby stayed until the 30th day of October, 1940, 10:00 o'clock A. M. and that the bond heretofore filed herein by said defendant remain in full force and effect.

Barnes,
Judge, United States District Court.

October 23, 1940.

277 IN THE DISTRICT COURT OF THE UNITED STATES, Entered Oct. 23, 1940.

For the Northern District of Illinois,

Eastern Division.

United States of America,
vs.
Stuart Solomon Brown, alias S. S. Brown. } No. 32168.

This day comes the United States by the United States Attorney and comes also the defendant Stuart Solomon Brown, alias S. S. Brown, in his own proper person and by his counsel and thereupon this cause coming on to be heard upon the said defendant's motion heretofore entered herein for a new trial, after arguments of counsel and due deliberation of the Court said motion is overruled and a new trial denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the said defendant by his counsel enters herein his motion in arrest of judgment as to each of the third, fourth and fifth counts of the indictment which motion is also overruled and denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the United States by the United States

Attorney enters herein its motion for judgment on the verdict and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reason why sentence should not now be pronounced it is therefore considered and

Ordered by the Court and is the sentence and judgment of the Court upon the verdict of guilty heretofore rendered by the Jury herein that the defendant Stuart Solomon Brown, alias S. S. Brown be committed to the custody of the Attorney General to be confined and imprisoned in a United States Penitentiary for and during a period of Two (2) Years on each of the third, fourth and fifth counts of the indictment and besides forfeit and pay to the United States of America a fine in the sum of Four Thousand
278 and no/100 Dollars ($4,000.00) on each of the third, fourth and fifth counts of the indictment and it is further

Ordered that the terms of imprisonment on the fourth and fifth counts shall run concurrently with the term of imprisonment on the third count and that the payment of one fine in the amount of Four Thousand Dollars ($4,000.00) shall discharge all fines. To which ruling and judgment of the Court the defendant duly excepts and on motion of the defendant it is further

Ordered that the execution of sentence herein be and it is hereby stayed until the 30th day of October, 1940, 10:00 o'clock A. M., and that the bond heretofore filed herein by said defendant remain in full force and effect.

Barnes,
Judge, United States District Court.

October 23, 1940.

279 And afterwards, to wit, on the 24th day of October, A. D. 1940, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge appears the following entries, to wit: Entered Oct. 24, 1940.

280 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

Thursday, October 24, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

United States of America,
vs.
William R. Johnson, *et al.*, } No. 32168.

This day comes the defendant William R. Johnson by his attorney and enters his motion to fix bail for the enlargment of the defendant pending appeal which motion is overruled and denied.

281 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

Thursday, October 24, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This day come the defendants, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly and Stuart Solomon Brown by their attorneys and enter their motions to fix bail for the enlargment of the defendants pending appeal which motion is overruled and denied.

Filed Oct. 24, 1940. 282 And on, to wit, the 24th day of October, A. D. 1940, came the defendants by their attorneys and filed in the Clerk's office of said Court Notice of Appeal in words and figures following, to wit:

283 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

United States of America, *Plaintiff*, *vs.* William R. Johnson *et al.*, *Defendants.*	Indictment for Violation of Sec. 145(b), Revenue Acts of 1936 and 1938, and Sec. 88, Title 18, U. S. Code. No. 32168.

NOTICE OF APPEAL.

Name and address of appellant:

William R. Johnson, Lombard, Illinois.

Name and address of appellant's attorney:

Floyd E. Thompson, 11 South LaSalle Street, Chicago, Illinois.

Offense:

Violation of Section 145(b) of the Revenue Acts of 1936 and 1938, U. S. C., Title 26 Section 145, for attempting to evade and defeat income tax for the years 1936, 1937, 1938 and 1939, and violation of Section 88, Title 18, U. S. C., for conspiracy to defraud the United States by committing offenses defined by the Revenue Act.

Date of judgment:

October 23, 1940.

Brief description of sentence:

This apppellant was sentenced the maximum provided by law,—five years' imprisonment in the penitentiary and $10,000 fine on each of the first four counts of the indict-

ment, and two years' imprisonment in the penitentiary and $10,000 fine on the fifth count of the indictment, the sentence to imprisonment to run concurrently and the payment of one fine of $10,000 to satisfy all fines.

Name of prison where now confined, if not on bail:

Appellant is not now confined in prison but is at large on bail under a stay of execution entered upon the overruling of the motion for new trial October 23, 1940, which expires October 30, 1940.

I, William R. Johnson, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment en-
284 tered October 23, 1940, in the District Court of the United States for the Northern District of Illinois, Eastern Division, on the grounds set forth below and other grounds to be set forth in a more detailed assignment of errors.

William R. Johnson,
Defendant-Appellant.

Dated October 24, 1940.

285 In the District Court of the United States.
• • (Caption—32168) • •

GROUNDS OF APPEAL.

Appellant, William R. Johnson, hereby reserving the privilege of filing a detailed assignment of errors, as provided by Rule 9, Title IV, of the Circuit Court of Appeals for the Seventh Circuit of the United States, and of including in said assignment of errors all the following grounds as well as others that may appropriately appear, states the following grounds for appeal:

1. The Court erred in not sustaining this appellant's motion for a directed verdict on each count of the indictment at the conclusion of the evidence for the prosecution.

2. The Court erred in not sustaining this appellant's motion for a directed verdict on each count of the indictment at the conclusion of all the evidence.

3. There is no substantial competent evidence in the record that this appellant wilfully attempted to evade pay-

ment of income taxes for the year 1936, as charged in the first count of the indictment.

286 4. There is no substantial competent evidence in the record that this appellant wilfully attempted to evade payment of income taxes for the year 1937, as charged in the second count of the indictment.

5. There is no substantial competent evidence in the record that this appellant wilfully attempted to evade payment of income taxes for the year 1938, as charged in the third count of the indictment.

6. There is no substantial competent evidence in the record that this appellant wilfully attempted to evade payment of income taxes for the year 1939, as charged in the fourth count of the indictment.

7. The Court erred in receiving in evidence declarations of co-defendants outside the presence of defendant Johnson against the defendant Johnson as to the first four counts of the indictment, and the prejudicial effect of such improper evidence could not be and was not prevented by the instruction of the Court that such evidence was not to be considered by the jury under the first four counts.

8. The Court erred in receiving in evidence, against the defendant Johnson as to the first four counts of the indictment, the income tax returns of the alleged aiders and abettors, and the declarations and acts and omissions of such alleged aiders and abettors in connection with the preparation and filing of their several income tax returns.

9. The Court erred in receiving in evidence against defendant Johnson under the first four counts of the indictment the acts and declarations of co-defendants outside the presence of defendant Johnson, in connection with the exchange of currency and the cashing of checks by the several co-defendants, in the absence of any

287 evidence competent under the first four counts showing that defendant Johnson had any interest in said currency or said checks or that he received any of said currency or proceeds of said checks.

10. There is no substantial competent evidence in the records that this appellant conspired and confederated with the named co-defendants or any other persons to commit offenses against the United States, as charged in the fifth count of the indictment.

11. The Court erred in receiving in evidence declarations of co-defendants and other alleged conspirators made

out of the presence of defendant Johnson, in the absence of proof by independent evidence of the existence of a conspiracy in which the defendant Johnson was a participant at the time said declarations were made.

12. The Court erred in receiving in evidence declarations of alleged co-conspirators which were not acts in furtherance of the alleged common object.

13. The Court erred in receiving in evidence statements of alleged co-conspirators which were mere narration of past events and not acts in furtherance of the alleged common object.

14. The Court erred in receiving in evidence against defendant Johnson documents relating to transactions of particular co-defendants containing prejudicial entries and notations regarding defendant Johnson which were no part of books of account or of records of transactions with such other defendants.

15. The Court erred in receiving in evidence details of operations of gambling houses and of losses of patrons of such gambling houses, and other similar immaterial matter which was prejudicial to this appellant and confusing to the jury.

288 16. The Court erred in receiving evidence under the fifth count of the indictment, against defendant Johnson, declarations and acts of other co-defendants in connection with the exchange of currency and the cashing of checks, without proof of any connection of Johnson with said transactions or of any interest of Johnson in such currency or proceeds of checks.

17. The Court erred in receiving in evidence proof of other criminal acts not connected with the charges made in the indictment and immaterial to any issue made by the indictment or any count thereof.

18. The Court erred in failing to instruct the jury that neither the mere cashing of checks nor the mere changing of currency by some of the co-defendants is evidence of income of defendant Johnson without proof that defendant Johnson was the owner of or had an interest in said checks or currency.

19. The Court erred in failing to instruct the jury that the existence of a conspiracy cannot be established against an alleged conspirator by evidence of acts or declarations of an alleged co-conspirator done or made in his absence.

20. The Court erred in failing to instruct the jury that

the evidence that defendant Brown referred to the Reserve for Uncollected Funds account on the books of the Lawrence Avenue Currency Exchange in conversation with witness Bagshaw as "the Johnson account" was hearsay as to defendant Johnson and could not be considered by the jury as proof that defendant Johnson had any interest in or connection with such account.

21. The Court erred in refusing to instruct the jury that the income tax returns of the several co-defendants and the testimony with respect to the contents thereof and of acts and declarations in connection with the
289 making and filing thereof were not competent evidence against defendant Johnson and could not be considered by the jury in considering its verdict as to defendant Johnson.

22. The Court erred in failing to instruct the jury that the evidence that defendant Brown stated to witness Clifford that he had destroyed the records of the Lawrence Avenue Currency Exchange was hearsay as to defendant Johnson and not to be considered by the jury in considering the charges against him.

23. The Court erred in failing to instruct the jury that the appearance on customers' account records of the Illinois Nationwide News Service of the name "Johnson" or "Bill Johnson" was hearsay as to defendant Johnson and not to be considered by the jury in considering the charges against him.

24. The Court erred in sending to the jury room a great mass of documents received in evidence which contained entries and statements having no bearing on any issue in this case and which were not connected with the defendant Johnson by any competent evidence.

25. The Court erred in overruling the motion to quash the indictment.

26. The Court erred in overruling the demurrer to the indictment.

27. The Court erred in denying the application for a more specific bill of particulars.

28. The Court erred in denying the motion to grant a mistrial.

William R. Johnson,
One of Defendants.
(Signed) Floyd E. Thompson,
Attorney.

290 IN THE DISTRICT COURT OF THE UNITED STATES,
For the Northern District of Illinois,
Eastern Division.

Filed Oct. 1940.

United States of America,
vs.
William R. Johnson, *et al.* } No. 32168.

NOTICE OF APPEAL.

1. Names and Addresses of Appellants:

Jack Sommers, 6144 North Rockwell Street, Chicago, Illinois;

James A. Hartigan, Berwyn, Illinois;

John M. Flanagan, 7451 Euclid Parkway, Chicago, Illinois;

William P. Kelly, Oak Park, Illinois;

Stuart Solomon Brown, 4132 North Kenmore Avenue, Chicago, Illinois;

2. Names and Addresses of Appellants' Attorneys:

Edward J. Hess, 111 West Monroe Street, Chicago, Illinois;

George F. Callaghan, 105 West Adams Street, Chicago, Illinois;

3. Offense:

Aiding and abetting violation of Section 145(b), Title 26 of the United States Code, and violation of Section 88, Title 18, United States Code; the wilful attempt to defeat and evade income taxes for the years 1936, 1937,
291 1938 and 1939, and a conspiracy so to do. (These Appellants charged in the first four counts with aiding and abetting, and in the fifth count as conspirators.)

4. Date of Judgment:

October 23, 1940.

5. Brief Description of Judgment and Sentence:

Appellant Sommers: Four (4) years and a fine of $8,000.00 on each of Counts 1 to 4, and two (2) years on Count 5 and a fine of $8,000.00, sentences to run concurrently and payment of one fine to satisfy all.

Appellant Flanagan: Four (4) years and a fine of $8,000.00 on each of Counts 1 to 4, and two (2) years on Count 5 and a fine of $8,000.00, sentences to run concurrently and payment of one fine to satisfy all.

Appellant Kelly: Four (4) years and a fine of $8,000.00 on each of Counts 1 to 4, and two (2) years on Count 5 and a fine of $8,000.00, sentences to run concurrently and payment of one fine to satisfy all.

Appellant Hartigan: Three (3) years and a fine of $6,000.00 on each of Counts 1 to 4, and two (2) years on Count 5 and a fine of $6,000.00, sentences to run concurrently and payment of one fine to satisfy all.

Appellant Brown: Two (2) years and a fine of $4,000.00 on each of Counts 3 to 5, sentences to run concurrently and the payment of one fine to satisfy all.

6. Name of Prison where Confined:

Appellants at liberty under a stay of execution granted by the District Court, which expires October 30, 1940.

We, the above-named Appellants, hereby respectively appeal to the United States Circuit Court of Appeals, for the Seventh Circuit, from the respective judgments above mentioned on the grounds hereinafter set forth.

Dated: October 23, A. D. 1940.

(Signed) Jack Sommers,
(Signed) James A. Hartigan,
(Signed) John M. Flanagan,
(Signed) William P. Kelly,
(Signed) Stuart Solomon Brown,
Appellants.

292 GROUNDS OF APPEAL FOR AND ON BEHALF OF JACK SOMMERS, JAMES A. HARTIGAN, JOHN M. FLANAGAN, WILLIAM P. KELLY, AND STUART SOLOMON BROWN.

1. There is no evidence to support the verdict as to any count in the indictment.

2. The verdict is contrary to the law and evidence.

3. The verdict is the result of bias, passion and prejudice.

4. The Court erred in denying the respective motions of the defendants for a directed verdict at the close of the evidence for the Government, and which motion was renewed at the close of all of the evidence.

5. The Court erred in denying the motion of the defendants to arrest the judgment.

6. The Court erred in the admission of evidence and erred in overruling objections to evidence.

7. The Court erred in admitting evidence of various conversations and declarations of the various defendants not made in pursuance of the conspiracy charged in the indictment.

8. The Court erred in admitting evidence of acts and declarations of other defendants and persons against these defendants done and made after these defendants had severed all connections with the alleged conspiracy.

9. The Court erred in admitting evidence of statements of acts of various persons and defendants made out of the presence of these defendants, which acts and declarations were hearsay.

293 10. The Court erred in refusing to require the Government to elect upon which count or counts of the indictment it would proceed, which motion was made at the close of the evidence for the Government and renewed at the close of all the evidence.

11. The Court erred in overruling the respective motions to quash the indictment and pleas in abatement filed by these defendants.

12. The Court erred in overruling the special plea of the statute of limitations.

13. The Court erred in denying the motions of the defendants for a more specific bill of particulars.

14. The Court erred in admitting in evidence acts and declarations of these defendants antedating the period set forth in the indictment.

15. The Court erred in admitting evidence against these defendants of matters and things not set forth or contained in the bill of particulars.

16. The Court erred in admitting in evidence against these defendants under the first four counts of the indictment various acts and declarations which were admissible, if at all, only under the fifth count of the indictment.

17. The Court erred in admitting in evidence the testimony of the defendant Brown given before the Grand Jury in January, 1940.

18. There is no evidence that any of these defendants aided and abetted the defendant Johnson in any attempt

to defeat and evade income taxes, or that any of them
294 conspired to defraud the United States.

19. The Court erred in admitting in evidence against these defendants numerous expenditures of the defendant Johnson and other persons with which these defendants have no connection or knowledge.

20. The Court erred in denying the motion of the defendants for a mistrial because of the misconduct of the prosecutor.

21. The Court erred in admitting in evidence against these defendants various books, documents and records of the Bon Air Country Club, Sunny Acres Farm, Nationwide News Service, and numerous ledger sheets and books of account of various persons, firms and corporations with which these defendants were in no wise connected and of which they had no knowledge.

22. The Court erred in admitting in evidence the income tax returns filed by all of the various defendants prior to the period covered by the indictment and by the bill of particulars.

23. The Court erred in limiting unduly the cross-examination of the witness Goldstein.

24. The Court erred in failing to instruct the jury that neither the mere cashing of checks nor the mere changing of currency by some of the co-defendants is evidence of income of defendant Johnson without proof that defendant Johnson was the owner of or had an interest in said checks or currency.

25. The Court erred in failing to instruct the jury that the existence of a conspiracy cannot be established against an alleged conspirator by evidence of acts or declarations of an alleged co-conspirator done or made in his absence.

295 26. The Court erred in failing to instruct the jury that the evidence that defendant Brown referred to the Reserve for Uncollected Funds account on the books of the Lawrence Avenue Currency Exchange in conversation with witness Bagshaw as "the Johnson account" was hearsay as to these defendants and could not be considered by the jury as proof that these defendants had any interest in or connection with such account.

27. The Court erred in sending to the jury room a great mass of documents received in evidence which contained entries and statements having no bearing on any

issue in this case and which were not connected with these defendants by any competent evidence.

(Appellants hereby reserve the privilege to file detailed assignment of errors, as provided in Rule IX of the Circuit Court of Appeals, for the Seventh Circuit, and to include in said assignment of errors, all or any part of the above grounds, as well as others which may appropriately appear.)

296 And afterwards, to wit, on the 24th day of October, A. D. 1940, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit: Entered Oct. 24, 1940.

297 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

ORDER.

Notice of appeal having heretofore been filed by William R. Johnson, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly and Stuart Solomon Brown and the Clerk of this Court having notified the trial judge of the filing of said notice of appeal, and the trial judge having directed the attorneys for the appellants and the United States Attorney to appear before him on Thursday, October 24 1940 at the hour of Two o'clock P. M., in Room 653 United States Court House, Chicago, Illinois, and it having been represented to the judge, upon behalf of the appellants, that the appeal is to be prosecuted not only upon the clerk's record of proceedings but also upon a bill of exceptions.

It Is Ordered: (1) That the appellants, within thirty (30) days after the taking of the appeal (filing with the clerk of this court of notice of appeal), procure to be settled and filed with the Clerk of this Court a bill of exceptions, setting forth the proceedings upon which the appellants, wish to rely in addition to those shown by the clerk's record of proceedings; (2) that the appellants, within the same time, file with the clerk of this court an assignment of errors of which appellants complain.

John P. Barnes,
Judge.

Dated: October 24, 1940.

Filed Oct. 31, 1940. 298 And on, to wit, the 31st day of October, A. D. 1940, came the defendants by their attorneys and filed in the Clerk's office of said Court Praecipe for Record in words and figures following, to wit:

299 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

PRAECIPE FOR RECORD.

To the Clerk of the District Court:

You Are Hereby Requested to prepare a transcript of the record in the above-entitled cause for the joint and several use of the defendants whose names are hereinabove set forth, in the United States Circuit Court of Appeals, for the Seventh Circuit, pursuant to notices of appeal heretofore filed on behalf of said defendants, and to include in such transcript of record the following documents filed and orders entered in said cause:

1. Indictment;
2. Pleas of not guilty of defendants;
3. Order permitting withdrawal of pleas and allowing filing of motions (5/16/40);
4. Motion of defendant, William R. Johnson, to quash indictment;
5. Order overruling said motion;
6. Plea in abatement in the nature of a motion to quash indictment filed by defendants, Andrew J. Creighton,

300 Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey;

7. Motion to require answer to special pleas and motions to quash, and order thereon;
8. Motion to strike pleas in abatement of defendants, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey, and order sustaining same;
9. Demurrer of defendant, William R. Johnson;
10. Order overruling aforesaid demurrer;
11. Joint and several demurrer of Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M.

Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey;

12. Order overruling aforesaid joint and several demurrer;

13. Special plea in bar as to Count 1 of the indictment, —statute of limitations;

14. Demurrer of the Government to aforesaid plea in bar;

15. Order sustaining demurrer to said plea in bar;

16. Re-entry of pleas of not guilty by defendants;

17. Motions for bill of particulars;

18. Order directing filing of bill of particulars (6/17/40);

19. Bill of particulars;

20. Exceptions to bill of particulars by all defendants, except William R. Johnson;

21. Order overruling aforesaid exceptions (7/24/40);

22. Motion of defendant, William R. Johnson, for more specific bill of particulars;

301 23. Order denying aforesaid motion (7/24/40);

24. Supplemental bill of particulars and order allowing filing thereof (8/13/40);

25. Motion of the United States Attorney to nolle pros indictment as to defendants, William R. Skidmore, William Goldstein, Orrie Alexander and Bernice Downey;

26. Order allowing dismissal as to aforesaid four (4) defendants;

27. Order allowing substitution of counsel;

28. Motion of defendants, William R. Johnson, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, William P. Kelly, Reginald E. Mackay and Stuart Solomon Brown, for a directed verdict of not guilty made at the conclusion of the Government's evidence;

29. Order denying the aforesaid motion;

30. Motion of defendants to require the Government to elect as to certain counts, made at conclusion of Government's evidence, and order thereon;

31. Motion by defendants, William R. Johnson, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, William P. Kelly, Reginald E. Mackay and Stuart Solomon Brown, for a directed verdict of not guilty made at the conclusion of all evidence;

32. Order denying the aforesaid motion;

33. Motion of defendants to require Government to

elect as to certain counts, made at conclusion of all evidence, and order thereon;

34. Motion of defendants to withdraw juror and declare a mistrial, and order denying said motion;

35. Verdict;

36. Motion for a new trial made on behalf of defendants, William R. Johnson, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly and Stuart Solomon Brown;

302 37. Order overruling motion for a new trial of aforesaid defendants;

38. Motion in arrest of judgment made on behalf of William R. Johnson, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly and Stuart Solomon Brown;

39. Order overruling the aforesaid motion in arrest of judgment;

40. Judgment and sentences;

41. Bill of exceptions:

42. Assignment of errors on behalf of defendants, William R. Johnson, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly and Stuart Solomon Brown;

43. Notices of appeal and grounds therefor as to defendants, William R. Johnson, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly and Stuart Solomon Brown, and proof of service thereof;

44. Order of District Court denying bail pending appeal;

45. Order fixing time within which to settle bill of exceptions;

46. Praecipe for record and proof of service thereon;

Said record to be prepared according to law and the Rules of the District Court and of the United States Circuit Court of Appeals, for the Seventh Circuit.

Dated: October 31, A. D. 1940.

Floyd E. Thompson,
Attorney for Defendant, William R. Johnson.

Edward J. Hess,
George F. Callaghan,
Attorneys for Defendants, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly and Stuart Solomon Brown.

Received a copy of the above and foregoing Praecipe for Record, this 31st day of October, A. D. 1940.

J. A. Wall,
U. S. Attorney,
per R. M. Remblett.

303 Endorsed: In the District Court of the United States, Northern District. * * (Caption—32168) * * Praecipe for Record. Filed Oct. 31, 1940. Hoyt King, Clerk.

304 Northern District of Illinois, } ss:
Eastern Division. }

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and partial transcript of the proceedings had of record made in accordance with Praecipe filed in this Court in the cause entitled *United States of America* v. *William R. Johnson, et al.*, D. C. No. 32168, as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 19th day of November, A. D. 1940.

Hoyt King,
Clerk.

(Seal)

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record, printed under my supervision and filed on the eleventh day of December 1940, in the following entitled appeals: No. 7500, The United States of America, Plaintiff-appellee vs. William R. Johnson, defendant-appellant; No. 7501, The United States of America, plaintiff-appellee vs. Jack Sommers, et al., defendants-appellants, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this Third day of December A. D. 1941.

[SEAL] KENNETH J. CARRICK,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the first day of October, in the year of our Lord one thousand nine hundred and forty, and of our Independence the one hundred and sixty-fifth.

7500

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

WILLIAM R. JOHNSON, DEFENDANT-APPELLANT

7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JACK SOMMERS, ET AL., DEFENDANTS-APPELLANTS

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division

And, to wit: On the twenty-fourth day of October 1940, there was filed in the office of the Clerk of this Court in cause No. 7500

a duplicate notice of appeal of William R. Johnson which said duplicate notice of appeal is not copied here as the same appears on pages 164 and 165 of the printed transcript record certified herewith under a separate certificate.

And, on the same day, to wit: On the twenty-fourth day of October 1940, there was filed in the office of the Clerk of this Court in cause No. 7501 a duplicate notice of appeal of Jack Sommers, et al., which said duplicate notice of appeal is not copied here as the same appears on pages 169 and 170 of the printed transcript of record certified herewith under a separate certificate.

And afterwards, to wit: On the fifteenth day of September 1941, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

October Term, 1940—April Session, 1941

No. 7500

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

WILLIAM R. JOHNSON, DEFENDANT-APPELLANT

No. 7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JACK SOMMERS ET AL., DEFENDANTS-APPELLANTS

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division

September 15, 1941

Before EVANS, SPARKS, and MAJOR, Circuit Judges.

MAJOR, Circuit Judge. These appeals are from a judgment, entered on the verdict of a jury, finding the defendants guilty of a wilful attempt to evade the payment of income taxes and of conspiracy to defraud the United States. The appellant in No. 7500 is William R. Johnson, and the appellants in No. 7501

(sometimes herein referred to as "codefendants") are Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly, and Stuart Solomon Brown. The indictment contains five counts, the first four of which charge Johnson with evasion of income taxes for the years 1936, 1937, 1938, and 1939, and are predicated upon Section 145 (b), Title 26, U. S. C. A. As to the offenses alleged in these counts, the codefendants (appellants in No. 7501) are charged as aiders and abettors. The fifth count charges all defendants with a conspiracy to defraud the United States of income taxes. Section 88, Title 18, U. S. C. A.

In addition to the appellants in No. 7501, a number of others were charged as aiders and abettors. As to such others, the charge was nolle prossed as to William R. Skidmore, William Goldstein, Orrie Alexander, and Bernice Downey. A verdict of not guilty was returned as to Andrew J. Creighton, Edward Wait, and Reginald E. MacKay.

The trial commenced August 17, 1940, and the verdict of the jury was returned October 12, 1940. As might be expected in a trial of this duration, many complicated and difficult questions, both legal and factual, were presented. Many errors are here assigned which is contended require a reversal of the judgment. After a lengthy and careful consideration of the voluminous records and briefs, we have reached the conclusion that the contention must be sustained. It would be impractical to consider all the errors assigned or contentions made by the respective parties, and we shall, therefore, discuss only those which we regard as of controlling importance.

The contested issues revolve largely around: (1) The denial of certain preliminary motions, (2) that the verdict of the jury is not supported by substantial, competent evidence, (3) the admission of improper evidence, (4) the improper examination and cross-examination of witnesses, (5) the improper and prejudicial remarks of the prosecutors, and (6) the denial by the court to include in its charge to the jury certain requests made by the defendants.

At the threshold of our consideration, we are confronted with the troublesome question arising from the court's denial of certain preliminary motions, pleas, and demurrers invoked by the defendants. On May 16, 1940, there was filed on behalf of the defendant Johnson what was entitled a motion to quash the indictment, and on the same date there was filed on behalf of the other defendants what was entitled a plea in abatement in the nature of a motion to quash. Both the motion and the plea attacked for substantially the same reasons the legality of the Grand Jury which returned the indictment. The defendants also filed a motion for rule on the Government to reply to such plea

and motion, which was by the court denied. The Government filed a motion to strike the motion and plea as being insufficient in law, which motion was allowed.

The attack upon the Grand Jury was upon the ground that it was without jurisdiction for the reason that the indictment was returned at a term of court subsequent to that at which it had been originally empaneled, without compliance with the Statute in that respect.

The Grand Jury was empaneled for the December 1939 Term.[1] This term continued until the first Monday in February; the February Term until the first Monday in March, and the March Term until the first Monday in April. The indictment was returned March 29, 1940, during the March Term.

On January 24, 1940, during the December 1939 Term, the Grand Jury was authorized, by order entered on that date, to sit during the February 1940 Term to finish investigations begun but not finished at the December Term. No question is raised but that this was a valid order and that t' Grand Jury was legally continued from the December to the February Term.

The motion by Johnson to quash (the same may be said of the plea in abatement on behalf of other defendants) alleged that the indictment, returned at the March Term in the year 1940, was without warrant or authority of law for the reason that an order entered February 28, 1940, purporting to authorize the continuance of the Grand Jury from the February to the March Term was void. This order, as alleged in the motion, is as follows:

"Now comes the Second December Term 1939 Grand Jury for the Northern District of Illinois, Eastern Division, by Dorothy W. Binder, Forewoman, and in open Court requests that an order be entered authorizing them, the said Second December 1939 Grand Jury, heretofore authorized to sit during the February 1940 Term of this Court, to continue to sit during the Term of Court succeeding the said February Term of Court, to wit, the March 1940 Term of Court, to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Terms of this Court, and which said investigations cannot be finished during the said February 1940 Term of Court; and the Court being fully advised in the premises.

"It is therefore ordered that the Second December 1939 Grand Jury, now sitting in this Division and District, be, and it is hereby authorized to continue to sit during the March 1940 Term of Court for the purpose of finishing said investigations."

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[1] The Terms for the District Court of the Eastern Division of the Northern District of Illinois are fixed by Statute (28 U. S. C. A. Sec. 152) to be held on the first Mondays in February, March, April, May, June, July, September, October, and November, and the third Monday in December.

This order, so it was alleged, was predicated upon a petition of the Grand Jury filed February 28, 1940, praying for a continuance order "* * * to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Term of this Court, and which said investigations cannot be finished during the said February 1940 Term of said Court."

The motion to quash as to the first, second, and third counts of the indictment alleged that on March 1, 1940, the same Grand Jury returned an indictment against the defendant Johnson, charging the same crimes, matters, and violations as are contained in the first, second, and third counts of the instant indictment, and that—

"* * * the matters contained in the first, second, and third counts of the present and instant indictment were finished and concluded at the February 1940 Term of the said Grand Jury; * * *"

As to counts four and five, it was alleged that "no investigation of said matters was begun at the December 1939 Term," and "the investigation of said matters was first begun at said March 1940 Term of Court." It is the contention of the defendants that the order of continuance was not in compliance with Section 421, Title 28, U. S. C. Supp. This provision, so far as now material, provides:

"* * * A district judge may, upon request of the district attorney or of the grand jury or on his own motion, by order authorize any grand jury to continue to sit during the term succeeding the term at which such request is made, solely to finish investigations begun but not finished by such grand jury, but no grand jury shall be permitted to sit in all during more than eighteen months: * * *"

No question is raised by the Government but that compliance with this provision is essential in order to give a Grand Jury vitality subsequent to the term at which it is originally empaneled. Moreover, in view of the fact that all inferior courts of the United States are of limited jurisdiction and possess only such power and authority as are expressly conferred, no question could well be raised in this respect. As was said in In re Mills, Petitioner, 135 U. S. 263, 267:

"* * * A grand jury, by which presentments or indictments may be made for offences against the United States, is a creature of statute. It cannot be empanelled by a court of the United States by virtue simply of its organization as a judicial tribunal. * * *"

If a court is without authority to empanel a Grand Jury except as the same is expressly conferred by Statute, it would seem to

follow inevitably that a Grand Jury empaneled could only have its authority or power continued to a subsequent term by strict compliance with the statutory provision. The language of the provision plainly limits the authority of the court to continue a Grand Jury to sit "during the term succeeding the term at which the request is made," and with equal clarity limits the continuance "solely to finish investigations begun but not finished by such Grand Jury."

It is contended by the defendants that the order of February 28, 1940, authorized the December Grand Jury to finish investigations begun during the February 1940 Term when, under the statute, the court had the power only to authorize it to finish investigations begun at the December Term. The Government disputes that the order of the court can be thus construed, but does not argue the question. The language "to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Terms of this court" leaves no room for argument but that the March Grand Jury was authorized to continue investigations begun at its February Term, as well as those begun at the December Term. It is equally plain that by reason of the statutory limitation, the court was without power to confer upon the Grand Jury authority to continue investigations begun at its February Term. The Government does not dispute—in fact, it, in effect, concedes—the soundness of this proposition.

The Government, however, in undertaking to meet the situation, relies upon an allegation of the indictment which purports to allege continuance of the Grand Jury, in conformity with the statute. (This allegation was attacked by demurrer as shown hereinafter). It is contended that by reason of this allegation, the question as to whether the Grand Jury was illegally continued to the March Term for the purpose of continuing an investigation begun at the February Term is academic. Reliance upon this allegation, in our judgment, places the Government in a precarious, if not fatal, situation. We are unable to discern how an illegal order of continuance can be cured or even aided by an allegation in the indictment to the effect that the Grand Jury was legally continued. The Government had an opportunity to answer the allegations of the motion to quash, but instead, entered a motion to strike, which was allowed. By such motion a legal question was presented which must be determined from the averments of the motion to quash.

In our view there can be no escape from the attack made upon the court's order except by blindly holding that the phrase "to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940

Terms" is valid as to the former and void as to the latter. We have been favored with no authority and we are unable to find any which would permit such a construction.

The Government also contends that by reason of the order of January 24, continuing the December Grand Jury to the February Term for the purpose of continuing any investigations begun at the December Term, that the Grand Jury at the February Term had no authority to begin any new investigation. Undoubtedly this is true, but we are unable to perceive how this furnishes any support for the order of February 28.

We are not greatly impressed with the defendants' argument that the Grand Jury was precluded from continuing an investigation during the March Term merely because of the fact that it, on March 1 (February Term), returned an indictment against Johnson charging the same violations as were charged in the first, second, and third counts of the instant indictment. True, a Grand Jury has no authority to continue an investigation which has been finished at a preceding term. While the return of an indictment might be an indication that the investigation was finished, we do not think it is conclusive. We see no reason why a Grand Jury is precluded from continuing an investigation after the return of an indictment, and subsequently again indict for the same offense.

The motion to quash with reference to the fourth and fifth counts of the indictment makes the direct allegation that the investigation of the matters therein charged was first begun at the March Term and that no such investigation was begun at the December Term. The fourth count charges the defendant Johnson on to wit, March 15, 1940, with an attempt to defeat and evade his 1939 income tax (other defendants charged as aiders and abettors). One of the means alleged is the filing of an erroneous return on March 15, 1940. Other means are alleged, not material to the instant question. The fifth count charges all the defendants with a conspiracy fom a period commencing about January 1, 1936, up to and including the return of the indictment. It appears that much of the discussion concerning these counts is interwoven with that in connection with the demurrer. It is the contention of the defendants that the offense charged in the fourth count was committed, if at all, on March 15, 1940. We think this is correct—in fact, the count so alleges. It is then argued that no investigation could have been begun prior to the date of the commission of the alleged offense and, therefore, not until the March Term. The Government takes issue with this contention and argues that the Grand Jury investigates facts, not offenses. It is pointed out that the Grand Jury was investigating Johnson's income for the years 1936 to 1938 inclu-

sive and could not avoid hearing facts which related to the same question for the calendar year 1939.

There is same plausibility in this argument in view of the fact that each of the first four counts charges the same offense except for different years. It has been held, however, and we think correctly so, that an attempt to evade income tax is a separate offense for each year. United States v. Sullivan, 98 F. (2d) 79, 80. In United States v. Miro, 60 F. (2d) 58, 61, the court said:

"* * * A tax could neither be evaded nor attempted to be evaded if it was not due; if, by the terms of the statute, there is no tax due in a particular case, there is no 'tax imposed by this act' to evade or defeat. * * *"

It appears to us that the language of the Statute "solely to finish investigations begun" must have reference to a legal investigation of an offense which has been committed. A Grand Jury is not a conservator of the peace. So far as we know, it has no authority to investigate offenses which it anticipates may be committed in the future. The mere fact that the Grand Jury had discovered evidence of tax evasion for previous years would give it no authority to presume that the same offense would be consummated in a later year. The fact that it heard testimony relative to offenses committed in previous years which might at some later time become relevant to an offense committed in the future, does not, in our judgment, sustain the argument that it could have begun an investigation as to such future offense. We think it is different with reference to the conspiracy count which was a continuing offense, an investigation of which the Grand Jury might have commenced at its December Term.

Our discussion so far has been predicated upon our conclusion that the order of February 28, 1940, was void. If our conclusion in this respect be erroneous, it would not follow that the allowance of the motion to strike the motion to quash could be sustained. As pointed out, the motion as to the first, second, and third counts expressly averred, as a matter of fact, that the investigations of the offenses charged in those counts "were finished and concluded at the February 1940 Term of the Said Grand Jury," and as to counts four and five, the averment was made that the investigation as to offenses therein charged was not "begun at the December 1939 Term of court" and was "first begun at said March 1940 Term of court." Assuming that the court entered a valid order of continuance, which we have decided to the contrary, the Grand Jury, according to the averments of the motion to quash, failed to comply with such order. We think it is plain that a Grand Jury, legally continued, has no authority to continue an investigation except one begun at its

original term and not finished either at the original term or an intervening subsequent term. The Government answers the argument as to these averments, by informing us as to the common practice of Grand Juries "engaged in a broad field of inquiry." This may be the most available answer, but legally it is a fiasco.

In defense of the Grand Jury proceeding, the Government relies upon a decision of this Court, Elwell v. United States, 275 Fed. 775. While it does not expressly so contend, we assume it infers, by reason of what was said in that case, that the Grand Jury may be considered as defacto. While we are loath to repudiate a holding of our own court, we are of the view that there is no such thing as a defacto Grand Jury in a Federal Court. In the Elwell case, the court cites People v. McCauley. 256 Ill. 504, 509, which, it is true, recognizes such a Grand Jury. The latter court expressly points out, however, that a Circuit Court of Illinois has general and original criminal jurisdiction, with common-law power to call or continue a Grand Jury. Its authority is not dependent upon Statute. A United States District Court, on the contrary, is of limited jurisdiction with such powers only as are expressly conferred. A Grand Jury is "a creature of Statute." In re Mills, Petitioner, supra. Furthermore, the Elwell case was decided previously to the enactment of the amendment of Section 421 supra, which expressly limits the authority of the court to continue a Grand Jury. It affords no assistance in the instant case.

We are not unmindful of the rule invoked by the Government that pleas in abatement and those of a kindred nature must be strictly construed. Facts must be stated, not conclusions. Here, however, the allegations were direct and positive. It is difficult to see how they could have been more specific. The challenge went to the very heart of the authority of the Grand Jury to act. The Government's motion to strike should have been overruled and the Government required to answer. The defendants were entitled to an opportunity to offer evidence in support of the motion and plea. Carter v. Texas, 177 U. S. 422, 447.

Finally the Government relies upon Section 556, Title 18, U. S. C. A., which provides in substance that no indictment, trial, judgment or other proceeding shall "* * * be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant." This provision is not applicable—the question presented is one of substance and not of form. Crain v. United States, 162 U. S. 625, 644.

In view of the importance of the case, the time consumed in its preparation and trial, as well as the expense relative thereto, we are reluctant to pronounce the action of the court as reversible error in striking the motion to quash and the abatement plea.

We are forced to the conclusion, however, that there is no escape from such a pronouncement. As was said in Crain v. United States, supra, 625, 644:

"* * * Nor ought the courts, in their abhorrence of crime nor because of their anxiety to enforce the law against criminals, to countenance the careless manner in which the records of cases involving the life or liberty of an accused are often prepared. Before a court of last resort affirms a judgment of conviction of, at least, an infamous crime, it should appear, affirmatively, from the record that every step necessary to the validity of the sentence has been taken. * * *"

Notwithstanding that our conclusion in this respect requires a reversal of the judgment, we think it is proper to express our views concerning some of the other issues presented. Demurrers were filed to the indictment by all defendants attacking its sufficiency on numerous grounds, one of which is the alleged insufficiency of the allegation with reference to the continuance of the Grand Jury. The indictment in this respect alleged:

"* * * having begun but not finished during said December Term of Court among other things an investigation of the matters charged in this indictment, and having continued to sit by order of this Court in and for said division and district during the February and March Terms of said Court for the purpose of finishing investigations begun but not finished during said December Term of Court, pursuant to request of the United States Attorney and upon motion of the Grand Jury, * * *"

The argument concerning this allegation naturally is interwoven to a considerable extent with that concerning the motion to quash. The most serious criticism is that it failed to allege that the investigation was not finished at the February Term. It does allege, however, that the investigations were begun but not finished during the December Term, and that the Grand Jury was continued to the February and March Terms for the purpose of finishing such investigations. It could not well have been continued to the March Term for the purpose of finishing an investigation which had been finished at the February Term. While the allegation is not as certain as good pleading requires, yet we think it may be reasonably construed to exclude the thought that the investigation was finished at the February Term.

It is also asserted that the allegation is only contained in the first count of the indictment and even if sufficient, it has no application to the other counts which failed to incorporate the allegation by reference or otherwise. We do not believe this position is tenable. As we read the indictment, the allegation is part of what may be termed the preamble and specifically refers to the

"matters charged in this indictment," which we think makes it applicable to all counts alike. It is argued that according to this allegation, only one order of court was entered continuing the December Grand Jury during the February and March Terms. True, the word "order" is used in the singular when it should have been in the plural, but we are not disposed to hold the allegation insufficient for that reason.

The fourth count of the indictment alleged the offense to have been committed on March 15, 1940. It is again argued that an investigation of this offense could not legally have been begun at the December Term, 1939. We have heretofore considered and sustained the validity of this argument. It follows that the demurrer, for this reason, should have been sustained as to the fourth count.

It is also urged that, assuming the sufficiency of the allegation with reference to continuance, the judgment must be reversed for the reason that no proof was offered in its support. While this question, of course, is not raised by demurrer, it is so closely related to our discussion concerning the continuance matter that it appears appropriate to consider it at this point. The Government makes no answer to the contention unless it be that the court takes judicial notice of its orders in support of jurisdictional allegations. How far the court may go in this respect we need not decide for the reason that such notice would have disclosed the Grand Jury was continued to the March Term, illegally as we have held, "to finish investigations begun but not finished * * * during the said December 1939 and the said February 1940 Term of this court." It is apparent that judicial notice of this order would not have supported the allegation. In fact, we have sustained the allegation because it is in substantial conformity with the statutory provision rather than the court's order. If the allegation was essential, as we think it was, it would seem equally essential to support it with proof. Failure to have proved venue, no doubt, would have been fatal to the judgment. We think failure to prove the allegation with reference to the authority of the Grand Jury to act is likewise fatal. This is especially true in the instant case where the Government relied upon it in order to escape facing the issue tendered by the motion to quash.

The position of the Government leads to the inevitable result that a Grand Jury may, with impunity, exceed the limitation which Congress has definitely and plainly placed upon its authority, to act at a succeeding term. Furthermore, its unauthorized acts are not subject to challenge and the Government can never be called upon to make proof that the Grand Jury has proceeded in compliance with law. When confronted with a motion to quash

or plea in abatement, it relies upon an allegation of the indictment. When the latter is placed in issue by the defendant's plea, it offers no proof in support of the allegation, and the only excuse for its failure to do so is that the court takes judicial notice. There may be room for contrariety of opinion as to the precise manner in which the authority of a Grand Jury should be challenged, but we doubt if any will contend that the Government can wholly evade the challenge as has been done in the instant case. Failure of proof with reference to the allegation under discussion is, in our opinion, fatal to the judgment.

We now return to a further discussion of the demurrer. It is contended that various allegations of the indictment are inconsistent and duplicitous. The first four counts are the same, or substantially so, except as to dates and amounts. We shall discuss the first, and what is said will be equally applicable to the second, third, and fourth. The count charges, in the language of the statute, that the offense was committed on to wit, the 15th day of March 1937. It alleges facts disclosing that Johnson was required on or before March 15, 1937, to file a return of his income for the calendar year 1936. There is set forth what purports to have been his actual income and tax which he should have paid, as well as his reported income and the tax paid. The latter is substantially less than the former. As a means of committing the offense, it is alleged that the return was made under oath March 12, 1937, and filed March 15, 1937. As a further means, it is alleged that Johnson "did conceal and cause to be concealed from any and all proper officers of the United States, his gross and net incomes aforesaid, and the sources of said gross and net incomes and the sources thereof; * * *"

The main contention of Johnson is that inasmuch as no date is alleged as to the time of concealment, a continuing offense is charged. There is some ground for this contention when viewed in connection with a subsequent allegation as to the codefendants (afterwards discussed). We are of the opinion, however, that this allegation can be reasonably construed as referring to March 15, 1937, the date of the offense as alleged. It is also argued by Johnson that the allegations with reference to the filing of the return and of concealment constitute a violation of Section 145 (a) and are, therefore, duplicitous. We do not believe there is any merit in this contention. We see no reason why the matters required or forbidden by that paragraph may not be utilized and alleged as a means of committing the offense defined by Section 145 (b).

As to the codefendants, the count presents a serious and, we think, fatal situation. Following the allegations as to Johnson, to which we have referred, it is alleged that—

"* * * during the calendar year 1936 and up to and including March 15, 1937, and continuously thereafter up to and including the date of the filing of the indictment * * * (all codefendants named) did * * * wilfully and knowingly aid, abet, conceal, induce, and procure the said defendant William R. Johnson, * * * to attempt in the manner aforesaid to evade and defeat the income tax aforesaid. * * *"

Thus the codefendants are charged with a continuous offense from a period during 1936 up to March 27, 1940, the date of the return of the indictment. While the offense against Johnson and the means employed in connection therewith are charged as of March 15, 1937, the codefendants as aiders and abettors are charged with an offense which extended over a period of years. This allegation against the codefendants is so utterly inconsistent with those against Johnson that it, in our opinion, invalidates the indictment as to them. The conclusion seems inescapable that the charge against the aiders and abettors could be no broader than that against the principal. Furthermore, we are of the view that the statutory provision upon which the indictment is predicated does not define a continuing offense, nor does it define an offense which can be committed prior to the date on which the taxpayer is required to file his return. As was said in United States v. Miro, supra, page 61:

"* * * A tax could neither be evaded nor attempted to be evaded if it was not due. * * *"

and as said by this court in O'Brien v. United States, 51 F. (2d) 193, 196:

"* * * There could, however, be no such prosecution for a willful attempt to evade or defeat a tax unless there was some tax due from the taxpayer. * * *"

In addition, as pointed out by the codefendants, they are charged as accessories both before and after the fact. It is argued that such an allegation is bad for duplicity in view of Section 550, Title 18, U. S. C. A., by which an accessory before the fact is made a principal and punished as such, while under Section 551, an accessory after the fact can only be punished to the extent of one-half of the maximum imposed upon the principal. The question thus presented has not been decided, so far as we are aware. The Government endeavors to meet the contention by arguing that Section 551 entitled "Punishment of Accessories" is solely for the guidance of the court in pronouncing sentence. It relies upon certain cases,[2] none of which

[2] Rothenberg v. United States, 245 U. S. 480; Mullaney v. United States, 82 F. (2d) 638; Madigan v. United States, 23 F. (2d) 180; Collins v. United States, 20 F. (2d) 574.

is in point. These cases go no further than to hold that by Section 550 the distinction between principals, accessories, and accomplices has been abolished and that an accessory or accomplice may be charged and punished as principal. It does not follow, as contended here, that the distinction between an accessory before and after the fact has been abolished, nor does the language of Sections 550 and 551 justify such a construction. The Government's position leads to the result that a defendant may be charged and tried without knowledge as to whether a conviction will subject him to the punishment provided for a principal or the lesser punishment provided for an accessory after the fact. Without information as to whether the jury considered his connection with the offense as having been prior or subsequent thereto, the court, for the purpose of imposing punishment, must determine in which capacity the defendant acted. We are unable to agree with the Government's contention in this respect. We do not believe a defendant can properly be charged in the same count as an accessory, both before and after the fact.

The fifth count charges all defendants with a conspiracy extending from January 1, 1936, to the time of the filing of the indictment, to defraud the United States of income taxes due from Johnson for the years 1936 to 1939, inclusive. The allegations of counts one, two, three, and four, so far as they refer to Johnson, are included by reference. The conspiracy alleged was to the effect that Johnson was engaged in the gambling business and that in order to prepare the way for the making by him of false and fraudulent returns, the defendants would conceal from the Revenue Officers the investment, participation, and true ownership of Johnson in numerous gambling houses and enterprises in Cook County and Chicago, Illinois, by operating them under names other than his. Twenty-five of such houses were named. It was further a part of the conspiracy to establish and operate currency exchanges' where the proceeds from the gambling houses could be converted into currency in such a manner as to conceal the source, ownership, and disposition thereof. It was also alleged that the defendants would file and cause to be filed false and fraudulent income tax returns by Johnson. As in the substantive counts there was set forth what purported to be the true income of Johnson for each of the years in question, and also the income as returned for each of those years. Numerous overt acts are alleged.

We need not discuss the numerous questions raised by the defendants as to this count. It charges a continuing offense which, in itself, is an answer to most of the criticism as to its validity. Skelly v. United States, 76 F. (2d) 483, 488.

We have already held that the fourth count was subject to demurrer as to all defendants. We now hold that the demurrer as to counts one, two, and three should have been sustained as to the co-defendants. As to the defendant Johnson, the demurrer was properly overruled as to counts one, two, three, and five, and as to the co-defendants properly overruled as to count five.

By motion for directed verdict at appropriate times, the question of the sufficiency of the evidence to sustain the verdict was preserved. It is here argued earnestly and at length that there was no substantial, competent evidence in support of the verdict. In view of the fact that the case must be reversed, we shall attempt to do little more than briefly refer to the theories advanced by the respective parties, and the general character of testimony in support thereof.

Johnson admittedly was a professional gambler and had been for many years. If he had any other business of consequence, the record does not disclose it. He was not just an ordinary gambler, but one of towering stature among that fraternity. The co-defendants were also admittedly in the same business. They operated brazenly and notoriously, and, so far as this record discloses, without interference or restraint during the period covered by the indictment. That the field was a fertile one is evidenced by the huge sums of money which apparently passed through their hands. It is of prime importance, however, to keep in mind that they were not charged with the violation of any law prohibiting gambling, or the operation of gambling houses. Neither were they charged with a failure to file income tax returns at the time required by law. Such returns were filed by Johnson, as well as by the co-defendants, and the Government received income tax for each of the years in question in substantial amounts. For the calendar year 1936, Johnson's return showed a net income of $161,892, upon which he paid a tax of $71,915; for the year 1937, a net income of $248,660, upon which he paid a tax of $128,399; for 1938, a net income of $101,946, upon which he paid a tax of $34,530, and for 1939, a net income of $251,715, upon which he paid a tax of $130,430. Substantially all the gross income disclosed by these returns was from his gambling operations.

An accountant for the Government computed Johnson's actual income for the year 1936, at $547,942; for the year 1937, $1,047,129; for 1938, $935,353, and for 1939, $961,504.

The Government sought to sustain the charge that Johnson failed to report all of his taxable income for the years 1936 to 1939, inclusive, on two distinct theories:

(a) By undertaking to prove that he owned a group of gambling houses operated in and about Chicago and that all the checks cashed, money deposited, and currency exchanged by persons operating these gambling houses were income from these gambling houses, and therefore that the aggregate of these banking transactions was taxable income which was in excess of the amount of net income which he reported; and

(b) By offering proof that he expended in said years more cash than he had available for spending, according to the income reported.

Each of the co-defendants except Brown was the operator of one or more gambling houses named in the indictment. Brown was the manager of the Lawrence Avenue Currency Exchange which handled funds and checks brought to it from various gambling houses. The total amount of money and checks handled by this and other exchanges and banks for the respective years, was, according to the Government's contention, the income of Johnson for such years.

This theory necessarily is predicated upon the premise that Johnson was the sole owner and proprietor and entitled to all the income from such houses. The soundness of the theory must be tested by the premise upon which it is constructed. This basic proposition the Government sought to establish by circumstantial evidence. The circumstances relied upon, in a general way, were proven by witnesses who were patrons, or who were minor employees of the various gambling houses, to the effect that Johnson frequently visited such houses, talked with persons who were in charge, exercised influence in the hiring of some of the employees, exercised certain control over the policies of operation, that the same group of workmen did construction and maintenance work at several of the gambling houses, that certain bus service was provided by the same company to serve the places, that the same accountants served Johnson and the other defendants in the preparation of their income tax returns, that large quantities of $100 bills were taken by the operators of the several gambling houses in cashing checks and exchanging currency, and that Johnson used large quantities of bills of the same denomination in paying the purchase price and for improvements on properties owned by him or in which he was interested. Johnson denied that he owned any of said gambling houses, or that he had any interest in the banking transactions, and offered evidence to show that the gambling houses were owned respectively by certain of those named in the indictment as co-defendants.

We have carefully examined the testimony on this theory of the Government's case, and we are of the opinion that, consider-

ing it in the light most favorable to the Government, as we must do, the most that can be said is that the proof discloses Johnson had an interest in the gambling houses. The evidence does not show that he was the sole owner and therefore entitled to all the proceeds. The Government's contention on this theory of the case must rest upon the assumption that he owned the entire interest in the houses, that the total of all the business transactions at the currency exchanges and banks represented income from such houses, and that such income was paid to Johnson. It is not claimed that there is any proof that Johnson actually received this income. Such fact, if it be a fact, must be inferred from the other assumptions which we have mentioned. As already stated, Johnson reported a large income from his gambling transactions for each of the years in question, and to say that his interest in the gambling houses was such as to entitle him to an income greater than that reported is to indulge in rank speculation. If Johnson had reported no income for those years, a different situation would have been presented. We have no hesitancy in holding that the verdict can not be supported upon this theory.

On the expenditure theory, however, the case is more favorable to the Government. This theory was sought to be established by proving a statement purported to have been made by Johnson on January 1, 1932, that he had cash on hand in the amount of $78.00. Thereafter, his income, as disclosed by his returns and his expenses, was shown year by year. The expenses, as shown by the Government from 1932 to 1939, were greatly in excess of his income for the same period. Admittedly, under this theory, the proof failed to establish the charge as to the year 1936. His income as reported for that year, plus what he had on hand at the beginning of the year, exceeded his expenditures by more than $184,000. For the year 1937, however, his expenditures exceeded his income by $106,000; for 1938, by $367,000; and for 1939, by $151,000. True, there is a dispute as to many of the items involved in these calculations and as to some of them, a serious dispute. We are of the opinion, however, that the proof of his income on this so-called expenditure theory was sufficient to present a jury question. As the proof on this theory, however, does not support the charge as to the year 1936 (count one), Johnson's motion for a directed verdict as to that count should have been allowed. As to the other counts, it was properly denied.

The motion for a directed verdict on behalf of the codefendants should have been allowed as to counts one, two, three and four. What we have said heretofore concerning the nature of

the offense charged is largely determinative. The charge against Johnson was not a continuing one and the offense, if committed, was by the filing of a false return on the 15th day of March of each year. There is no evidence and no contention that the co-defendants had anything to do with the preparation of these returns or that they had any knowledge or information as to their contents. Acts performed and statements made by them before the commission of the offense by Johnson are not sufficient to justify their conviction as aiders and abettors. We need not stop to inquire what distinction there is, if any, between aiders and abettors and a conspirator, for the reason that the case was presented on the theory that there was a distinction. It was so recognized in the indictment and throughout the trial. The evidence which the Government relies upon indiscriminately to establish the charge in the substantive counts, and the conspiracy count, however, was sufficient to require submission to the jury upon the latter charge. As to this count, therefore, the motion for a directed verdict was properly denied as to all defendants.

The defendants severely criticize a large amount of evidence admitted against them. After a study of the record in this respect, we are not convinced that any of it, with the exception later referred to, is such as to require a reversal. In a case of this character, much must be left to the discretion of the trial court. A large part of the evidence complained of was proper as to the conspiracy count, but improper as to the substantive counts. The fact that it is not relevant as to the latter does not require its exclusion as to the former. Typical of such evidence was the income tax returns filed by the co-defendants for the years covered by the indictment. They were properly admissible, we think, under the conspiracy count but should have been limited thereto. We are unable to see how they were material against any of the defendants as to the other counts. On the other hand it is difficult to see how their admission was harmful. In fact, it is our view that if they had any effect, they were beneficial to the defendants rather than harmful. These returns disclose a substantial income on the part of the co-defendants who, according to the Government's theory, were mere employees of Johnson in the operation of various gambling houses. The amount of income reported indicates that such co-defendants had an interest in such houses rather than that they were mere employees of Johnson as contended. It would therefore seem that they had no prejudicial effect.

Another line of testimony, properly subject to criticism in our opinion, was that given by scores of witnesses as to every conceivable detail concerning the operation of gambling houses.

Some of this was relevant to the contention that Johnson was the owner and operator of the houses. On the other hand much of it was wholly irrelevant to any issue in the case. A glaring example of such testimony was given by the witness Spankeren. He testified as having gambled at some of the houses mentioned in the indictment. After losing $16,000, he quit gambling. A law suit was filed by his mother-in-law against a number of persons, including the defendant Johnson and co-defendants Sommers and Hartigan, apparently under a Statute authorizing recovery of losses sustained at gambling. The suit was settled with a lawyer representing Sommers for $1,000, and the promise of a political appointment. It appears to be the Government's theory that this evidence proves ownership by Johnson. There is nothing to connect him with the incident, however, except the fact that he was named as a defendant in the suit. There is nothing to indicate that he had anything to do with settling the law suit or that he paid or promised anything for a settlement. This testimony did not prove, or tend to prove, ownership. The most that can be said is that it tended to show that the mother-in-law must have thought Johnson had an interest in the gambling house as he was made a defendant. By the same token, however, she must have thought that all the other defendants likewise had such an interest. Some of the testimony complained of pertained to gambling houses with which the defendants were not shown or claimed to have had the slightest connection. A great amount of time was consumed in proving that gambling houses operated upon a large scale. This was irrelevant to any issue in the case, especially in view of the fact that the Government did not rely upon losses sustained by individual patrons in determining Johnson's income. There was no issue in the case as to the occupation of Johnson or the co-defendants. By Johnson's tax returns, he had disclosed an enormous income from gambling operations, and the returns of the co-defendants disclosed substantial incomes. The offense charged was evasion of income tax—not gambling or operating gambling houses. A person reading the record, without knowledge of the charge, could reasonably conclude that the defendants were tried on the latter offense. There is room for argument that the admission of such testimony in wholesale quantities was prejudicial. To what extent this may be true, we need not decide. It must be remembered that the defendants were admitted gamblers engaged in the operation of gambling houses on a large scale. It would seem they are not in a very good position to complain of that part of the testimony which merely disclosed the magnitude of their operations.

We shall now refer to the testimony given by one Frank J. Clifford who testified for the Government, purportedly as an expert witness. It is contended by the defendants that his testimony invaded the province of the jury. On the other hand the Government contends that he testified in response to proper hypothetical questions. He qualified as an expert accountant and that he had been in the employ of the Government as a Revenue Agent for five years. So far as material to the question now under consideration, he first testified that the amount of currency delivered to the Lawrence Avenue Currency Exchange between the months of July 1938 and September 1939 was $1,289 000. So far as is shown by the bill of exceptions contained in the record, he then, of his own volition, stated:

"I have made an analysis and computation based on Government's exhibits (naming over 400 exhibits) and other evidence in the record to determine the amount of net cash income reported by the defendant William R. Johnson for the years 1932 to 1939, inclusive."

He was asked to state the amount, and after doing so, volunteered the statement that he had made a computation of Johnson's expenditures for the years 1932 to 1939, inclusive. In response to a question he gave the result of such computation and again volunteered that he had made a computation as to the excess of expenditures over net cash income for the same period of time. In response to a question, he gave the result of such computation. He then volunteered the statement:

"With the exhibits just a moment ago enumerated, and the other evidence in the record, I have made a computation to determine the total amount of gross income of the defendant Johnson for the calendar year 1936."

The examination of this witness (omitting the numerous objections by defendant's counsel) proceeded as follows:

"Q. What is the amount, from your computation, of the gross income of the defendant Johnson for the calendar year 1936, according to your computation?

"The Court. You are making reference to those exhibits and the evidence in the record?

"Mr. Hurley. He used those as a basis for his computation.

"The Court. Overruled.

"The Witness. $547.942.38.

"I am able to state the amount of tax still due by the defendant Johnson to the United States for the calendar year 1936, after allowing credit for the amount of tax shown on defendant's tax return for the year as shown by Government's Exhibit R–10, in evidence.

"Q. And what is the total amount of tax still due the United States, according to your computation, for the year 1936?

"The WITNESS. $268,041.09."

Without a question the witness stated—

"I have made a computation based on the list of exhibits which you have read to me and the other evidence in the case to determine the total amount of Johnson's net income for the calendar year 1937.

"Q. What is that amount?

"The WITNESS. $1,047,129.77."

Again, without being questioned, he stated:

"I am able to state the amount of tax still due by Johnson for the calendar year 1937, after allowing credit for the amount of tax shown on Johnson's return for that year.

"Q. And what is the total amount of tax still due to the United States, according to your computation for the calendar year 1937?

"The WITNESS: $588,064.20."

The same character of question was propounded and the same character of response made as to Johnson's net income and tax due the Government for the years 1938 and 1939. It will be noted that the witness was not asked to assume anything. It is not necessary to refer to his cross-examination in determining the propriety of his examination in chief. It plainly discloses, however, that he decided in favor of the Government all the controverted issues upon which his answers were predicated.

Proper and specific objections were interposed by the defendants and overruled. The mere recitation of the questions propounded and answers given by this witness demonstrates their gross impropriety.[3] He was permitted to examine hundreds of exhibits, consider "all the evidence in the case" and testify as to each of the years in question the amount of Johnson's net income and tax due thereon. In arriving at his factual conclusions, he necessarily was required to weigh the testimony on many conflicting points and to decide all controversies in favor of the Government. After this testimony the jurors were no longer required to think. The vital issues concerning which they had heard testimony for weeks had been determined and decided.

In support of its argument that Clifford's testimony was proper, the Government cites and relies upon a number of cases in which hypothetical questions have been approved.[4] There is little dis-

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[3] United States v. Spaulding, 293 U. S. 498, 506; Dexter v. Hall, 82 U. S. 9, 26; Wilkes v. United States, 80 F. (2d) 285, 291; United States v. Stephens, 73 F. (2d) 695, 704.

[4] Travelers Ins. Co. v. Drake, 89 F. (2d) 47, 50; Gleckman v. United States, 80 F. (2d) 394; Guzik v. United States, 54 F. (2d) 618, 620; City of Port Washington v. Thacher, 245 Fed. 94, 96.

pute among the authorities as to when and in what form a hypothetical question is proper. As was said by this court in the Guzik case, supra, page 620:

"* * * Certainly a hypothetical question may be deemed safe from ultimate attack where there is evidence tending to prove all the facts assumed and it includes all the material facts which the evidence tends to prove and which bear upon the subject with regard to which the expert is asked to express an opinion."

The reason an answer to such a question does not invade the province of the jury is aptly stated in Travelers Ins. Co. v. Drake, supra, page 50:

"* * * The truth of facts assumed by the hypothetical question as within the probable range of the evidence, as a basis to support the hypothetical question, is a question of fact for the determination of the jury to find with the other submitted facts upon a fair submission of the issue, and it must determine whether the basis upon which the hypothetical question rests has been established. * * *"

None of the cases relied upon by the Government has any application to the instant situation for the reason that by no stretch of the imagination can the questions be treated as hypothetical. Not a single question by which the objectionable answers were elicited contains any assumption or hypothesis. In fact, some of his testimony was voluntarily given. It follows that the jury was not permitted to pass upon the validity or soundness of the premise upon which the answers were based. Thus the essential element of a hypothetical question, by which it is saved from invading the province of the jury, was eliminated. In oral argument before this court, counsel for the Government, in effect, conceded that after the testimony of this witness there was nothing left for the jury to decide except the truthfulness of his testimony.

The Government contends that the cases cited by the defendants are inapplicable for the reason that "none of them involves the type of case which we are concerned with, namely an income tax prosecution." We are unaware, however, of any reason or authority by which a different rule should be applied because of the character of the case. That a proper hypothetical question could have been framed and propounded, we do not doubt. That such was not the case is so plainly and conclusively demonstrated as to admit of no dispute. We are of the view that the testimony of this witness, going to the very heart of the controverted issue and invading the province of the jury as it did, was so prejudicial and damaging that it alone would require a reversal of the judgment.

It would serve no good purpose to further extend this opinion by a discussion of the many other errors assigned. We have

endeavored to limit our discussion to the more important ones—those relating to substance which cannot be aided by verdict, and which affect the substantial rights of the defendants. In our study of the record and in preparing the opinion, we have endeavored to keep in mind a basic concept of American jurisprudence which, from time immemorial, has taught that every person charged with crime, regardless of his occupation or station in life, is entitled to a fair and impartial trial upon the issue or issues tendered by a legal indictment, returned by a Grand Jury empowered to act.

In view of what we have said, it necessarily follows that the judgment must be reversed. It is so ordered.

EVANS, Dissenting.

The assignments of error may be divided into two groups: (a) those that deal with the indictment; (b) and errors allegedly committed in the course of the trial.

Group (a) must likewise be divided into: (1) attacks on the grand jury and its authority to return the indictment here involved, and (2) assaults on the various counts of the indictment due to their alleged duplicity and inconsistency.

Convinced that the grand jury was within its authority in returning this indictment, I am compelled to dissent. This assignment raises a most important question. The holding of the majority opinion will greatly handicap the prosecution of offenders, who have concealed the facts establishing their crimes, so successfully, that a prolonged investigation into their activities is necessary. Moreover, I feel so certain that none of the counts of the indictment is demurrable because of inconsistency or duplicity, that dissent here, too, is necessary.

The assignments of error which challenge the sufficiency of the evidence to sustain the conviction of the first four counts set forth in the indictment have raised doubts which have made me pause, but here, too, I am persuaded that the evidence presented a jury question.

Other questions I shall discuss at such length as their importance, in my opinion, deserves.

(1) Defendants contend that the grand jury returned the indictments upon investigations begun during extensions of its term, rather than during its initial term. This, it is asserted, was contrary to the statute, 28 U. S. C. A. Sec. 421, which reads:

"* * * A district judge may, upon request of the district attorney or of the grand jury or on his own motion by order authorize any grand jury to continue to sit during the term succeeding the term at which such request is made, solely to finish investigations begun but not finished by such grand jury, but no

grand jury shall be permitted to sit in all during more than eighteen months: * * *"

My reasons for rejecting defendants' urge in this regard are:

(a) It is not shown that the indictment was a result of subsequent investigations, i. e., investigations begun at the February or March Terms, rather than at the December Term.

(b) The indictment itself states that the investigations were in fact begun at the December Term.

(c) The crimes charged, all flowed from the same comprehensive and integral plan, so that in fact there could be but one investigation, although, because of statutory provisions, each year's attempt is made an "annual" crime as to each participant.

(d) The inevstigation as to the tax year 1939, which the proof pointed to, as necessarily showing a beginning of the investigation at the March 1940 Term (because the crime was not committed until March 15, 1940) may well have been anticipated and investigation of its probable future commission begun at the grand jury's initial term in December 1939. In fact, a study of this year may well have been deemed necessary to confirm the facts, and the proper deductions from such facts, developed in the investigation of previous years. It would have been negligent for them not to have continued their investigation of the criminal plan to the date of the hearing, when their investigation pointed strongly to the existence of a criminal plan in the years 1936, 1937, and 1938.

(e) In construing the statute, we must give a fair and rational construction to the word "investigation" otherwise a conclusion, unreasonable in its results, will be reached.

To better understand the situation, I restate briefly the facts which this contention concerns:

December 1939—The grand jury was impaneled.

January 24, 1940—The first order extending the term of the grand jury.

Feb. 28, 1940—The second order extending the term of the grand jury.

March 1, 1940—The indictment No. 32127 against Johnson for same transactions as in counts 1, 2, and 3, of instant indictment, was returned (February Term).

March 15, 1940—Commission of last substantive offense charged, i. e., in regard to 1939 tax.

March 29, 1940—The instant indictment returned, during March Term.

The first order of extension, made January 24, 1940, authorized the grand jury to sit during the February, 1940 term of court to finish investigations begun but not finished at the December, 1939

Term. We should presume they did what they were ordered to do.

The second order of extension of the term of the grand jury (which order is the basis of defendants' attack) was on the petition of the grand jury therefor:

"Now comes the * * * December Grand Jury * * * and * * * requests that an order be entered authorizing them * * * (the said Grand Jury) heretofore authorized to sit during the February 1940 Term * * * to continue to sit during the * * * March 1940 Term * * * to finish investigations begun but not finished * * * during the said December 1939 and the said February 1940 Terms * * *.

"It is Therefore Ordered That the * * * December Grand Jury * * * be * * * authorized to continue to sit during the March 1940 Term of Court for the purpose of finishing said investigations."

The defendants argue that since the indictment was returned during the third term and covered: (a) crimes[5] which had been the subject matter of an indictment returned during the second term, and as to which presumably investigations had been finished in said second term, a new investigation of such crimes, must therefore have been begun in the third term; (b) crimes[6] not theretofore covered in the first indictment, and one of them in fact not committed until the third term—a fortiori, investigation as to these crimes could not have been begun in the first—December—Term and therefore any indictment charging such crimes is void because predicated on an investigation which the grand jury had no right to make, having been initiated during extensions of its original term.

This contention, though somewhat plausible, is quite fallacious.

(1) The indictment's preamble alleges

"The Grand Jurors * * * at the December Term * * * having begun but not finished during said December Term of Court among other things an investigation of the matters charged in this indictment, and having continued to sit by order of this court * * * for the purpose of finishing investigations begun but not finished during said December Term of Court * * *."

This was the same grand jury which presented the petition containing the words, allegedly ambiguous, upon which the order here assailed, is based. Should not their formal statement, made at the culmination of their deliberations be considered as proof positive of the facts they recite? Must not the formal statement of the grand jury as to their own acts, done in the secrecy of the grand jury room, be accepted? As against such positive statement, de-

[5] Attempt to evade 1936, 1937, and 1938 taxes.
[6] Attempt to evade 1939 taxes, and conspiracy count.

fendants without knowledge, make statements in the nature of conclusions, without explanatory basis or sources of information given—when it is apparent they make such statements merely on their own deductions from the fact that the fourth count of the indictment dealt with a fact which occurred after the December Term had expired.

The recital of this fact in the indictment can not be challenged by a demurrer, plea in abatement, or motion to quash, all of which challenge issues of law (Longsdorf, Cyclopedia of Federal Procedure, Secs. 2122, 2136, 2145).

(2) The first order of extension, made January 24, 1940, authorized the grand jury to sit during the February, 1940, term of court to finish investigations begun but not finished at the December 1939 term. Must we not presume the grand jury acted as it was legally directed to act, during the February term, i. e., finish investigations begun at December Term? If such be the fact, the second extension only gave them permission to continue investigations begun at the December Term, because they had had no authority to begin any other investigation during the February Term.

(3) The crimes, which the grand jury was investigating, were in reality the fruition of a single scheme, the results of which were multiple crimes arising not by virtue of the fact that distinct, separate, transactions and schemes were involved, but because the income tax statute makes possible a recurring crime for each annual period of its existence. As was said in the case of U. S. v. Sullivan, 98 F. 2d 79, CCA 2,

"Indeed the crimes charged in the indictment describe one course of conduct extending over several years, which results in separate offenses simply because the duty to file a return and pay the tax is one that recurs every twelve months."

The scheme (assuming here its existence) was of a single, comprehensive plan wherein A, B, C, D, and E, claimed ownership of the respective gambling houses in order to relieve F, the real owner, of a liability for larger surtaxes. The scheme was a single one. It was to run for an indefinite period. In the course of its life various crimes were committed, some against state laws, some against Federal laws. The grand jury was put on the trail at its December Term. Due to the successful covering of all tracks, time and effort were required by the grand jury to ascertain whether the defendants' action was merely to avoid state law prosecutions or whether said defendants had committed violations of Federal criminal laws and were seeking to conceal their violations.

The grand jury was unable to complete its investigation in one month. It sought, and secured, an extension of time. Still it was unable to complete its investigation. It again sought and secured an extension of time. Undoubtedly, information was obtained

during the first extension that had not been uncovered during the December Term. But it was the same criminal scheme, the investigation of which was begun in the December Term. The grand jury could validly continue to investigate the facts originally found at the December Term, supplemented by what it found during the first continuance, for it was the same illegal scheme which was being investigated.

Assume now, as defendants contend, that the grand jury began its investigation of later aspects of this same illegal scheme during the February or March terms. In fairness to them, must we not accept their statement that they were merely continuing investigations begun at December Term? There is nothing to indicate these defendants formally terminated their relationships and started new ones each year, thereby making anew, an annual conspiracy. No, the defendants A, B, C, D, and E, having long ago conceived the plan of deceptive ownership of the various houses, merely maintained the same relationship through the years involved. The most that can be said is that the evidence which the grand jury may have considered at its later sessions manifested the continued life of the identical, integral, continuing scheme to defeat the income tax law by numerous deceptive acts. They may have come to the grand jury's attention later, but they were a part of the same investigation begun at the December Term.

The majority opinion places much weight on the fact allegations in the motion to quash—on the ground that such facts are admitted by the Government's motion to strike—which facts stated that as to the first three counts the investigation was necessarily completed on the return of the first indictment in February Term and such investigations being finished, they could not be again renewed (begun) during an extension of the same grand jury term because such extensions are made solely to cover investigations begun but not finished during the initial term. The motion to quash also states as a fact that as to the fourth count (1939 taxes) no investigation was begun until the March Term.

In passing it should be said that the allegation of such facts, wholly hearsay and unsupported by proof, and set forth in the nature of a conclusion, are properly challenged by a motion to strike.

As to the first three counts—of what materiality is the fact that the same crimes were covered by an indictment during the first extension of the term? Nothing could be better evidence of the fact that the investigation relative thereto was "not finished" during that extension than the fact that the grand jury found it necessary to present a second indictment to cover the same offenses. (The majority opinion concedes the right to continue investigations, even after the return of a first indictment. What is there

then to prevent the indictment, on this issue, being valid as to the first three counts, and therefore valid support of the judgment?)

We ought not ignore the well-established rule that rulings on motions to quash and plea in abatement to indictments are not reviewable here, for "unless (there is) such a failure to properly exercise judicial discretion as to cause real injustice * * * defendant can not complain where no prejudice has resulted * * *"[7]

The majority opinion states, "We are unable to discern how an illegal order of continuance can be cured or even aided by an allegation in the indictment to the effect that the Grand Jury was continued." Admitting that an illegal order of continuance is void, my position is that the instant order is neither illegal nor void when construed in the light of the facts shown by the indictment and the continuing nature of the crime under investigation. The indictment does not recite that the grand jury was "legally continued." It recites facts from which that deduction is inescapable.

The indictment states all the investigations were begun at the December Term. The first order directed them to continue only investigations begun at the first term. The second order permits them to "continue to sit for the purpose of finishing said investigations." The petition upon which the second order was based recited the grand jury had been theretofore authorized to sit during the February Term (note, it was only to finish investigations begun in December) and asked to be authorized "to continue to sit to finish investigations begun but not finished by * * * (them) during the said December 1939 and the said February 1940 terms."

Why can not the time phrase "during the said December and the said February terms" be construed to modify merely the verb "finished" and not the preceding verb, "begun"—and the verb "begun" be read in the light of the first order of continuance, to mean "theretofore begun" in the December Term? I can reach no other conclusion than that a fair reading of the two petitions for extension of time and the language of the indictment wherein the grand jurors stated that they continued "to sit for the purpose of finishing investigations begun but not finished during said December Term of Court," closes the door to further discussion.

Another reason for this conclusion is to be found in the word "investigation" as used in this statute. "Investigation" is a noun which defines action. Alone, it is indefinite and well-nigh meaningless. The grand jury began its investigation when sworn in.

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[7] Longsdorf, Cyclopedia of Federal Procedure, Sec. 2132, 2135.

(Charge of Justice Field, Federal Cases No. 18,250. Note to A. L. R. Vol. 22, p. 1356. Blair v. U. S., 250 U. S. 273). Investigation of what? Of crimes which were committed in the District? If this be its meaning then the field of investigation after the continuance, was limitless. This all-inclusive meaning must be rejected, I think, if for no other reason than that it renders meaningless the sentence wherein the word appears. The word "investigation" must have a more restricted connotation. A more limited and rational meaning of this word may be had if we bear in mind what the grand jury is organized for, and to emphasize the fact that it is to investigate facts. Being laymen (usually), they are hardly qualified to investigate legal questions such as are raised by counsel for accused after the indictment is returned. The grand jury investigates the facts brought to its attention, which facts establish or point to the commission of a crime.

To illustrate—Before the grand jury, appears a witness, and tells of D's making and selling large quantities of liquor. Other witnesses confirm the story. The search is continued. The trail becomes hot. Defendant is not the only one involved. It appears the territory covered by the operations is extensive and the business, large. The participants are numerous. Also, it appears that a master mind behind the scenes directs the operation of all. He divides the spoils, retaining a goodly portion for himself.

The grand jury is unable to complete its study within the month and asks for, and secures, an extension of time in which to "investigate." To what must its investigation be confined during the continuance?

Let us go further with our imaginary case. During the second month's investigation the proof becomes more definite and clear as to individuals, as to crimes committed, and also of a conspiracy to commit them, as well as the names of the parties thereto. In justice, however, to the individuals, possibly innocent, whose names have been on the tongues of several witnesses, more time is needed and a second order of continuance is sought and obtained.

Finally, the indictments are about to be drawn. Unexpectedly, a witness appears who gives testimony which, in view of the previous stories, is entitled to great weight. He admits his own participation in the enterprise. He is an actor who played a leading role in the tragedy. He is an accomplice, and his motive is to obtain immunity. However, he adds a new phase to the case. He tells the story of the inside working of the crimes. The long-continued success of the enterprise is due to the fact that the master mind has repeatedly bribed a revenue agent and thereby avoided prosecution.

Was the new crime, to wit, bribery of the Government officer a part of the original investigation? Who is to determine when the grand jury investigation began, which disclosed not only the commission of substantive crime, but of conspiracy? If there were separate investigations, when did one end? The other begin?

Under the holding of the majority opinion the grand jury could not indict except for the substantive crimes which had been been proven in the first month's investigation. Moreover, the court (and perhaps a petit jury) was required to first try and determine when the investigation of count one began—and also of counts 2, 3, 4, and 5. The statement of the grand jury in its indictment is of no avail.

The more logical construction of the word "investigation", as here used, it seems to me, can be had by limiting it to those matters which engaged the attention of the grand jury during the December Term, but not restricting it to crimes which had been established during that first month's inquiry. If the facts established by the testimony brought out on the second or third continuance of the grand jury disclose a crime or crimes, and such facts are associated with the subject matter of the investigation of the first term, the grand jury may validly indict therefor.

The rights of defendants charged with crime should always be diligently protected. Courts and grand juries, statutory creatures that they are, should never exceed their statutory powers. But, just as important, is the binding force of a conviction of one accused of crime, whose long and carefully contested trial has resulted in a verdict of guilt. We must not be deceived by astute presentation of a hypercritical contention which delves into the niceties of every possible technical defect, be it, as here, the ambiguity of the second order continuing the grand jury term, or the question of duplicity, discussed immediately following. Pleadings and orders in criminal cases should be read and construed rationally and reasonably and fairly. Grand juries and indictments are to prevent false and malicious charges and to inform defendants of the charges upon which they must stand trial. That is their sole purpose.

2. Duplicity.—Was there duplicity? Was there a charge that the codefendants were accessories after the fact?

The specific wording of the counts challenged negatives any intent to charge a crime other than aiding and abetting the crime of attempting to evade the income tax for each year. The language is clear and only hypercritical deductions can support a contention that the crime of accessory after the fact was also meant to be charged. As was said by this court in Meyer v. U. S., 258 F. 212, 214,

"Another contention is that the indictment does not show that the overt act was done to effect the object of the conspiracy. Invoking the rule that inferences are to be taken against the pleader, plaintiffs in error insist that we shall infer that they lawfully turned over the * * * check * * *. But the rule does not extend to imagining inferences that are contrary to the fair common sense reading of the averments."

Obviously the attempt to evade a tax is a continuing crime, running to the date of the Government's discovery and indictment therefor. It may, of course, encompass several distinct offenses in the course of its duration. The attempt is effectuated in part by the filing of the return on March 15, partly by concealing of records, failure to keep books, continued holding by others of income-yielding businesses of taxpayer, etc. The crime of attempt is not necessarily ended with the filing of the return, if the attempt in fact continues thereafter. Neither is the crime of aiding the attempt, there ended. The attempt to evade may be, and often is, finally terminated on its discovery by the Government. This reasoning does not, however, preclude the indictment of the taxpayer for some isolated act effecting the attempt, such as the filing of a false return on a particular day.

Counsel stress the fact that codefendants are charged with aiding not only before March 15, of each year, but continuously thereafter, to the date of the indictment. Aside from the suggestion just made, that the crime of aiding the attempt actually continued for such period, it may be pointed out that Johnson, the principal, was charged not only with filing a false return on the particular date specified, March 15, but—without specifying the time—charged that he concealed from the Government officers his income and all books and records reflecting such income.

A plain reading of the counts discloses the charge of but one offense, i. e., aiding and abetting the offense.

But, conceding there was a multiplicity of offenses charged, was it a prejudicial or reversible error? Not if the inescapable trend of precedents upholding indictments against attack on the ground of duplicity where no prejudice is shown, be followed.*

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*Jelke v. U. S., 255 F. 264:

"Decisions that reject technical objections to criminal indictments are not now the exception, and an overwhelming array of authorities may be found that call for liberal construction of criminal pleadings (citing many cases).

"While perhaps instructive, we are convinced that many of the criticisms made are hypercritical and evidence scholastic ingenuity, but if adopted in this case, or applied to the average indictment, 'would rightly bring odium upon the administration of justice in the minds of all sensible people, whether learned in the law or not.'"

In Hewitt v. U. S., 110 F. 2d 1, 5, the Eighth Circuit said (quoting the Supreme Court in part):

"'The rigor of old common law rules of criminal pleading has yielded, in modern practice, to the general principle that formal defects, not prejudicial, will be disregarded. The true test of the sufficiency of an indictment is not whether it could have been made more definite and certain, but whether it contains the elements of the offense

Language of Indictment Indicative of Charge of Single Crime, in each Count.—A study of the indictment plainly reveals Johnson (in count one) is charged simply with an attempt to defeat and evade income taxes in that he "did wilfully and knowingly attempt to defeat and evade a large part * * * of a tax upon his net income for the calendar year 1936 * * * which said wilful attempt * * * was by means and in the manner following (here follow numerous recited acts, in themselves offenses, which Johnson claims rendered the indictment duplicitous as to him) * * *." As to codefendants, it is specifically charged that "during the calendar year 1936 and up to and including March 15, 1937, and continuously thereafter up to and including the date of filing this indictment * * * (naming codefendants) did unlawfully, feloniously, willfully and knowingly aid, abet, conceal, induce and procure the said defendant Johnson * * * to attempt in the manner aforesaid to evade and defeat the income tax aforesaid * * * by the means and in the manner aforesaid * * * (26 U. S. C. A. Sec. 145).

The codefendants are charged merely with aiding in such attempt. They are not charged with being accessories after the fact as they allege, but merely with continuously aiding the attempt. The words "feloniously aid in the attempt in the manner aforesaid" conclusively show the pleader had but one crime in mind, and that was not the misdemeanor of an accessory after the fact.

Moreover, duplicity does not arise from the fact that the alegations would support the charging of two crimes, if in fact only one be charged or adequately stated.[9] I think that is the instant situation.

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intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet, and in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction.'

" 'This section was enacted to the end, that while the accused must be afforded full protection, the guilty shall not escape through mere imperfections of pleading * * *

"The sufficiency of an indictment should be judged by practical and not by technical considerations. It is nothing but the formal charge upon which an accused is brought to trial. An indictment which fairly informs the accused of the charge which he is required to meet and which is sufficiently specific to avoid the danger of his again being prosecuted for the same offense should be held good."

The Fifth Circuit said, in Hartwell v. U. S., 107 F. 2d 359, 362.

"While it is certainly true that a valid indictment can not be dispensed with as a predicate to conviction where an indictment is necessary * * * it is also true that the practice of fine combing indictments for verbal and technical omissions is no longer countenanced in courts, and that a substantial compliance with the purpose of an indictment to acquaint the defendant with the offense of which he stands charged, so that he can prepare his defense and protect himself against double jeopardy, is sufficient."

[9] In Howell v. U. S., 296 F. 911, the Fifth Circuit said:

"It thus appears that it is an offense for a dealer to fail to register and to pay the special tax, and that it is another and separate offense for any person to purchase or sell derivatives of opium or cocoa leaves, such as * * *, except in form of packages to which the tax paid stamps are attached.

"Each of the offenses above named should be charged in separate counts of an indictment because they are separate. That part of the indictment which charges that the defendant as a dealer was required to register, and that he unlawfully dealt in the prohibited drugs, does not charge that he failed to register. The indictment, therefore, does not charge one of the two offenses, and it follows that the language just referred to is surplusage. But the indictment does charge that the defendant was a dealer, and dealt in and had in his possession narcotics to which the stamps evidencing

Where Several Crimes Recited Are Incidents of One Transaction There Is No Duplicity.—Duplicity does not arise where the offenses charged are merely varying aspects or incidents of the same transaction.[10] The principal offense here charged was the

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the payment of the internal revenue tax were not attached. It therefore sufficiently charges the second of the offenses above mentioned. The form of the indictment is imperfect, but in our opinion it is sufficient to uphold the conviction of the defendant as a dealer, for the reason that the attempt to charge the failure to register was not successful."

In Ray v. Commonwealth of Ky., 230 Ky. 656, 66 A. L. R. 1297, the Kentucky Court of Appeals said:

"The effort to charge appellant as an aider and abettor, after charging him and G. as principals, and without setting out the charge of aiding and abetting in a separate count, does not render the indictment as a whole defective (the indictment was in one paragraph). * * * In Watkins v. Com., 227 Ky. 100 * * * an indictment for murder charging two defendants as principal and as aiders and abettors in a single count, was held sufficient."

27 American Jurisprudence, Indictments and Informations, Sec. 126, page 686:

"Although at common law different grades of the same offense cannot be included in the same count, it is now the generally approved practice to allow the different grades of the same offense to be th s joined, as also an offense or offenses included in the principal crime charged, although it is the more usual practice to set up the several grades or degrees in different counts. An indictment against two persons which charges both as principals and later in the same count charges the accused alone with aiding and abetting in the commission of the offense, is not defective for not stating the latter charge in a separate count."

In Kitrell v. U. S., 76 F. 2d 333 (C. C. A. 10) the court said:

"It is said that each (count) is bad for duplicity in that each charges an attempt to defeat and evade the tax and a failure to make a return, and that the only method of tax evasion charged is the failure to make return. But the third count does not charge * * * Nor can it be maintained that either of the counts is duplicitous. The questions thus raised seem to now be authoritatively settled against appellant's contention."

The Court, in Connors v. U. S., 158 U. S. 408, 410, said:

"The first assignment of error questions the sufficiency of the indictment in that it charges the accused, as he insists, with three different offenses in one count, namely unlawfully and with force and arms seizing, carrying away, and secreting the ballot box; * * * that having aided and assisted in the forcible and unlawful seizure * * * and with having counselled, advised, and procured the seizure.

"This objection to the indictment is not well taken. The offense charged was that of unlawful interfering with the officers of the election in the discharge of their duties * * *. The verdict of guilt had reference to that crime, whether committed in one or the other of the modes specified in the indictment. Undoubtedly it was in the discretion of the court to compel the prosecutor to state whether he would proceed against the accused for having himself seized, carried away, and secreted the ballot box, or for having assisted or procured others to do so. But there was no motion * * * to make such statement * * * nor, if made by demurrer or by motion and overruled, would it avail on error unless it appeared that the substantial rights of the accused were prejudiced by the refusal of the court to require a more restricted or specific statement of the particular mode in which the offense charged was committed. There is no ground watever to suppose that the accused was taken by surprise in the progress of the trial, or that he was in doubt as to what was the precise offense with which he was charged * * *."

Cain v. U. S., 162 U. S. 625, 626. The Supreme Court said:

"We are of the opinion that the objection to the second count upon the ground of duplicity was properly overruled. The evil that Congress intended to reach was the obtaining of money from the U. S. by means of fraudulent deeds, powers of attorneys, orders, certificates, etc. * * * The statute was directed against certain defined modes for accomplishing a general object, and declared that the doing of either one of several specific things each having reference to that object, should be punished by imprisonment. * * * We perceive no sound reason why the doing of the prohibited thing, in each and all of the prohibited modes, may not be charged in one count, so that there may be a verdict of guilty upon proof that the accused had done any one of the things constituting a substantive crime under the statute. And this is a view altogether favorable to an accused, who pleads not guilty to the charge contained in a single count; for a judgment on a general verdict of guilty upon that count will be a bar to any further prosecution in respect of any of the matters embraced by it."

In Skelly v. U. S., 76 F. 2d 483, the C. C. A. Tenth held:

"The acts of a principal to a substantive offense and the acts of an accessory after the fact thereto, are one continuous criminal transaction. At common law the principal and accessory after the fact may be jointly indicted and where so indicted they should be charged in one count * * *. Therefore the acts of the two constitute a single offense committed by them jointly, one acting as principal and the other as accessory after the fact."

U. S. v. Leebe, 34 F. Supp. 989, affd. 118 F. 2d 246; Silkworth v. U. S., 10 F. 2d 711; U. S. v. Faro, 18 F. 901; Rowan v. U. S., 281 F. 137; Egan v. U. S., 287 F. 978; Greenbaum v. U. S., 80 F. 2d 113; Kurczak v. U. S., 14 F. 2d 109; U. S. v. Otto, 54 F. 2d 277; Jacobsen v. U. S., 272 F. 399; Connors v. U. S., 158 U. S. 408.

attempt to evade income taxes. The codefendants' offense was aiding that attempt. They gave such aid before the filing of the return by filing separate returns which misled the Government as to the true ownership of the houses, and, after the return, by concealing, failing to keep, or destroying, records, and by continuing the deceptive ownership of the various houses. All the acts were simply means of effecting their crime of aiding the attempt—that was all that was charged by the indictment or punished by the sentence. I have very serious doubt that an aider of the crime, who is punished as a principal, could also be punished as an accessory after the fact, even if it were so charged. When he becomes a principal, the other offense becomes merged. Otherwise, an aider before the fact and after the fact could be more seriously punished than the principal, which was hardly within the contemplation or purpose of the Act.

Allegation of Dates May Be Treated as Surplusage.—The indictment which gives rise to the alleged duplicity concerns the dates, or period, covered in connection with the said complicity of the codefendants. Such dates or allegation of period may be treated as surplusage. The date is not a material element of the offense charged—and the period beyond the March 15, if that be taken as the crucial datte, may be considered as surplus allegation[11] or be corrected by the facts proved.[12]

Duplicity may be error of form, which under 18 U. S. C. A. Sec. 556, does not render the indictment bad.[13]

Looking at this matter of the allegation of the continued aid of the principal's attempt to evade each year's tax, from an ordinary, common sense viewpoint, we have simply a case of A, B, C, D aiding E to evade 1936 tax by X means, and aiding the attempt to evade the 1937, 1938, and 1939 taxes by the same X means—they have really but used the X means continuously to assist the effectuation of the annually recurring attempt, and, since the assistance covered at least four years, and appertained to all years' taxes, this assistance is, unfortunately for the co-defendants, made four offenses by virtue of the statutory annual recurrence of criminal liability. Since such assistance existed in each year as to that respective year's taxes, and perhaps inferentially, though not inevitably, as to the preceding year's or years' taxes by virtue of the Government's failure earlier to discover the scheme, no prejudice and no untruth in allegation occurred.

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[11] Capone v. U. S., 56 F. 2d 927; Sondericker v. U. S., 41 F. 2d 144, see also, Meyer v. U. S., 258 F. 212; Johnson v. Biddle, 12 F. 2d 366; Farley v. U. S., 269 F. 721; Sugar v. U. S., 252 F. 75; U. S. v. Socony Oil Co., 310 U. S. 150.

[12] Clayton v. U. S., 284 F. 537; Morgan v. U. S., 148 F. 189; U. S. v. Rogers, 226 F. 512.

[13] U. S. v. Meyering, 54 F. 2d 621.

Where there is no prejudice, no reversible error results from duplicity.[14]

No Prejudice Where A Sentence Is Supported by One Valid Count.—It is most important to recognize the fact that the judgment of sentence and fine on each of the substantive counts was to run concurrently with that imposed on the first count. Under the well-settled rule, if one count supports the judgment, it will not be overruled even though other counts do not sustain the judgment.[15]

Does not the first count sustain the judgment? What is the sentence and fine? Are they not merely the maximum penalty for one found guilty as an aider and abetter, i. e., as principal (and not accessory) in attempt to evade?

Reading this evidence with a most indulgent eye and giving the verdict the credence and weight which is its due in a criminal case, I can not, in all generosity to these defendants, charged with attempting to evade, or assisting in such evasion, find it possible to say there was no evidence for any of the years, 1936 to 1939, to sustain the verdict and judgment.

Statutory Reference in Count to the "Attempt" Statute, Not the "Accessory After the Fact" Statute.—The counts of the indictment here challenged refer to but one statute as the foundation of the indictment, namely, the statute making it an offense to attempt to evade income taxes (26 U. S. C. A. Sec. 145). It does not cite the "accessory after the fact" statute, 18 U. S. C. A. Sec. 551. The indictment uses substantially the phraseology of said statute and specifies the crime to be, inter alia, a "felonious" aiding and abetting, which it could not be if the charge were one of accessory after the fact, which is a misdemeanor.

Bill of Particulars Indicated Single Offense of Aiding Was Charged.—The bill of particulars (Part VI, A) is illuminative of the pleading in the indictment relative to the "continuous nature of the aiding and abetting, namely, that the identical scheme for aiding continued throughout the years, i. e., the fictitious ownership of the various houses, the filing of false returns, each relative to the particular year's taxes attempted to be evaded. Even as to acts which might most readily be construed to be acts of an accessory after the fact, such as in Part VI A 10 of the bill of particulars—"On December 29, 1939, * * * (co-defendants) made a false statement to certain Internal Revenue

[14] Morgan v. U. S., 148 F. 189; Bailey v. U. S., 278 F. 489; Lewellen v. U. S., 223 F. 18; Nudelman v. U. S., 264 F. 942; Wetzel v. U. S., 233 F. 984; Sparks v. U. S., 90 F. 2d 61; Clayton v. U. S., 284 F. 537.

[15] New v. U. S., 10 F. 2d 146; Hawkins v. U. S., 1 F. 2d 596; Reuben v. U. S., 86 F. 2d 464; Aczel v. U. S., 232 F. 653; Greenburg v. U. S., 253 F. 728; Taylor v. U. S., 2 F. 2d 444; Clifton v. U. S., 45 U. S. 242; Claassen v. U. S., 142 U. S. 140; Powers v. U. S., 223 U. S. 303; U. S. v. Trenton Potteries, 273 U. S. 392.

officers." But this accusation is followed not by a charge of being accessory after the fact, but by the allegation "and thereby did then and there knowingly aid and assist said Johnson in wilfully attempting to evade and defeat * * * the payment of his individual income taxes * * *.

Instruction Was Only for Offense of Aiding.—The charge to the jury covered solely the "aiding and abetting offense" and a reading of the statute providing therefor and making an aider a principal.[16] The court in instructing the jury said

"Generally speaking, counts 1, 2, 3, and 4 charge the defendant, William R. Johnson, with willful attempt to defeat and evade income taxes alleged to be due * * * and charge the other defendants with aiding, abetting, inducing, and procuring the defendant, Johnson, in his attempt to defeat and evade. (Then quotes the statutory provision on aiding and abetting.)

"Accordingly, it is the law that one who aids, abets, counsels, commands, induces, or procures the commission of a crime is a principal, and you may consider Counts 1, 2, 3, and 4 of the indictment as charging that all of the defendants wilfully attempted to evade and defeat the income taxes alleged to be due from * * * Johnson * * *."

Sentence Was Only for Offense of Aiding.—The sentences of the codefendants were solely for the "aiding and abetting" offense (and conspiracy). There was therefore no prejudice to the defendants, and it is indicative, as was the instruction, that but one offense was alleged, tried, and found.[17]

Indictment in Language of Statute Sufficient.—The offense of aiding and abetting was charged in substantially the language of the statute, and is sufficient. It was not subject to demurrer, motion to quash, or demand to elect. The indictment charges the codefendants did "unlawfully, feloniously, wilfully, and

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[16] In Lewellen v. U. S., 223 F. 18 (CCA 8), the court said:

"It is probable that the U. S. attorney was either uncertain about the law or the facts of the case and attempted to make averments in one count charging both offenses. This is not permissible; but as there was no special demurrer for duplicity or other attack upon the indictment, and as the trial judge instructed the jury concerning the law governing the second-mentioned offense only, namely, the carrying of liquor from without the state into the Indian Territory, and as under that charge the defendant was found guilty 'as charged in the indictment' and sentenced accordingly, this court will treat the indictment in the same way as charging a violation of the offense denounced by the Act of 1895 only."

In Wiborg v. U. S., 163 U. S. 632, the Court said:

"Defendants' counsel did not seek to compel an election, nor in any manner by their motion to arrest or otherwise, to raise the question of duplicity, nor do they now make objection to the proceedings on this ground. The district judge instructed the jury that the evidence would not justify a conviction of anything more than providing the means for aiding such military expedition by furnishing transportation for their men * * *.' Under these circumstances, the verdict cannot be disturbed on the ground that more than one offense was included in the same count of the indictment, but it must be confined to the offense to which the jury were confined by the court."

[17] Refusal of trial courts to direct an election of offenses charged has been held to be nonprejudicial where but one sentence was imposed. Nudelman v. U. S., 264 F. 942; Wetzel v. U. S., 233 F. 984.

knowingly, aid, abet, conceal, induce, and procure the said defendant Johnson * * * to attempt in the manner aforesaid to evade and defeat the income tax." The "aider" statute provides, whoever "aids, abets, counsels, commands, induces, or procures its commission, is a principal." These two phraseologies are sufficiently parallel to render the former an allegation simply of an aider of the attempt and an allegation of the offense in the statutory terms and therefore valid.[18]

3. Witness Clifford's Answer to Hypothetical Question.—The majority opinion stresses the error arising from the Government's accountant Clifford's testimony, who, it is contended, by defendants, usurped the jury's function,[19] when answering a hypothetical question—to the effect that Johnson had a taxable income in excess of that which he reported.

It is conceded that hypothetical questions have their proper place, but they must be predicated on stated assumptions as to evidence presented, and the witness is not to be permitted to decide the ultimate facts and thereby usurp the jury's function.

But merely studying the quotations of the record given in the majority opinion it is obvious that the answers were to questions framed on assumptions. He is asked the amount of Johnson's income, say for 1936, according to his computations, with "exhibits and evidence in the record' "used as a basis for his computation." The "exhibits and evidence" were Johnson's tax returns, certified copies of local assessment lists, escrow agreement, Bon Air records, accountant Horwath's records, etc."

An accountant may be permitted to total income from all the sources mentioned in the exhibits he has identified and state such total solely as "his computation." The defendants can in defense show their evidence, and the jury's function is to make their own computation, guided, if they wish to be, by the accountants for the respective sides.

Whether or not Johnson had income in excess of that which he reported was one of the facts which the jury had to determine

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[18] Tinkoff v. U. S., 86 F. 2d 868; Capone v. U. S., 56 F. 2d 927; Yip Wan v. U. S., 8 F. 2d 478; Rowan v. U. S., 281 F. 137; Jelke v. U. S., 255 F. 264; Peck v. U. S., 65 F. 2d 59; Chiaravalloti v. U. S., 60 F. 2d 192; Guzik v. U. S., 54 F. 2d 618; Wygant v. U. S., 6 F. 2d 148; Pounds v. U. S., 171 U. S. 35; Ledbetter v. U. S., 170 U. S. 606.

[19] On the "usurping of the province of the jury" Wigmore states, Sec. 673:

"This being the plain, logical, and necessary reason for the use of the hypothetical question, it will easily be seen that it is not resorted to from any fear that the witness will 'usurp the function of the jury.' This bugbear, vigorously denounced with sentimental appeals to the value of jury trial, has been made to serve again and again as the dreadful source of those evils which the hypothetical question enables us to avoid. But the expert is not trying to usurp that function and could not if he would. He is not trying to usurp it, because his error, if any, is merely the common one of witnesses, that of presenting as knowledge what is really not knowledge. And he could not usurp it if he would, because the jury may still reject his testimony and accept his opponent's, and no legal power, not even the judge's order, can compel them to accept the witness' statement against their will. * * * The 'usurpation' theory * * * has done much to befog bench and bar, and to assist in producing some of the confusion which attends the precedents."

from all the evidence. The jury could and probably did reject some evidence as not credible or relevant. If it did not believe the Bon Air records were pertinent to Johnson's income tax liability, they could be discarded, and the jury could also throw out Clifford's conclusions along with it.

We are here dealing with a long trial wherein the defendants exercised their right to a jury trial. We cannot assume that the jury failed to properly weigh the evidence or that it lacked the intelligence to understand what the charge involved and the nature and quantum of proof necessary to sustain the charge. It would indeed be hard to believe that any juror failed to understand that the witness' answer was not based on said witness' assumption of taxable income.

Both counsel cite the Guzik case, (54 F. 2d 618). The case favors the Government's contention though not a square holding that the identical question here under review was proper. It was there said:

"Objection was made to the submission of a hypothetical question asking a witness to calculate the amount of tax which would be due on the assumption that the government's evidence (bank deposits and dividends, etc.) reflected taxable income. Since the computation is merely an arithmetical process, thereby avoiding any difference of opinion as to the result, the objection must be considered as directed to the assumption that the items set forth were income. Objection was also made that such question did not include certain other facts tending to show losses. In discussing the limitations on hypothetical questions, Jones, in his Commentaries on Evidence, states: '* * * Where the facts are in dispute it is sufficient if a hypothetical question fairly states such facts as present the examiner's theory of the case.' It cannot be expected that the interrogatory will include all the contentions or theory of the adversary, since this would require a party to assume the truth of that which he generally denies. * * * Each side, in an issue of fact, has its theory of what is the true state of the facts, and asumes that it can prove it to be so to the satisfaction of the jury, and so assuming, shapes hypothetical questions to experts accordingly. A question should not be rejected because it does not include all the facts of which there is any evidence at all. * * * Generally speaking the trial court is the arbiter of the propriety of the question; and the real test of the propriety of any given hypothetical question is its fairness. * * * We conclude that the government's asumption that the receipts constituted evidence of income was the valid basis for the hypothetical question submitted. The jury still had to determine the controverted issue of whether the assumption were correct."

If one were to frame a technically correct hypothetical question in this kind of case, the preamble would be so long the jury would be unable to retain the facts on which the question was predicated. Hundreds of items would need to be considered in determining Johnson's annual income. A hypothetical question including them in its premise would be of doubtful value.

Moreover, guilt does not depend on a finding that every item which the Government claims should be included, be accepted by the jury. It was not every item which was decisive of the outcome.

Another factor in the framing of hypothetical questions arises where the witness has just testified to the facts on which the question is based. That was the case here. In such instances, it is hardly necessary (unless the situation necessitates the recital so that the jury will understand the answer) that all the testimony which he has just given should be restated at length in the question.[20]

4. It is contended that the proof does not sustain the conspiracy charge—i. e., appellants were not shown to have conspired specifically to aid Johnson in his attempt to defeat his income tax. It may be admitted that they acted jointly, even conspired, but, so it is argued, the object of their joint action was not to defraud the U. S. Government out of its income taxes, but to avoid prosecution of the Illinois statutes dealing with gambling.

The jury found that the income of the respective houses belonged to Johnson by virtue of his ownership of them—a fortiori, neither the income nor the houses belonged to the co-defendants, and they therefore were intentionally combining to mislead the Government in income tax matters by filing tax returns as owners of the houses when in fact they knew the houses and their income belonged to Johnson, and should have been reported by him. It would be strange that this same group should go on year after year filing these deceptive returns if it were not done pursuant to an agreement of each co-defendant with Johnson.

The rather nebulous strands with which the Government's evidence wove the several defendants together convinced the jury

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[20] Wigmore, Sec. 675. "But does it follow that, when the opinion comes from the same witness who has received the basis of it by actual observation, those premises must be stated beforehand, hypothetically or otherwise, by him or to him? For example, the physician is asked, 'Did you examine the body?'; 'Yes'; 'State your opinion of the cause of death.' Is it here necessary that he should first state in detail the facts of his personal observation, as premises, before he can give his opinion?

"In academic nicety, yes; practically, no; and for the simple reason that either on direct examination or on cross-examination each and every detail of the appearance he observed will be brought out and thus associated with his general conclusion as the grounds for it, and the tribunal will understand that the rejections of these data will destroy the validity of his opinion.

"Through failure to perceive this limitation, Courts have sometimes sanctioned the requirement of an advance hypothetical statement even where the expert witness speaks from personal observation. * * * But this fallacy of being too unpractical in forcing the logic of the theory is generally and properly repudiated."

that each defendant knew his place in the scheme and knew of the others' participation. We cannot review such evidence. The credibility of the witnesses, some in denying all intent of conspiracy to attempt to evade income tax, and others, in giving evidence of a common enterprise, to deliberately mislead the Government in its ascertainment of income received—is not for us to review. The jury alone must weigh the words of those who appear before them and neither this nor the district court can set aside its findings.

It should also be mentioned that the sentence imposed upon the conspiracy count (which punishment is lesser than on the substantive counts) was by the judgment made to run concurrently with the other sentences. Wherefore it follows that the judgment must be affirmed if the conviction in any substantive count be sustained.

It may be admitted, so it is argued, that all the defendants acted jointly, even conspired together, but the object of their joint action was not to defraud the United States Government out of its income taxes, but to avoid prosecution for gambling under the Illinois statutes.

It is, of course, conceded, that a conspiracy may be established by circumstantial evidence. But, defendants argue, it must be established—and the conspiracy must be the one charged in the indictment. To meet this requirement, the Government's proof disclosed deceptive ownership of gambling houses and the filing of income tax returns by co-defendants, as owners, when, in fact, neither the property nor the income was theirs. This alone not only tended to establish, but rather conclusively proved the joint effort was to avoid income taxes, not to avoid local prosecution for gambling. Rather persuasive is the argument that no other motive could have prompted the defendants to falsely deny to Government investigators the ownership of the houses. For it is hardly conceivable that individuals would falsely subject themselves to income tax liability if the conspiracy was not to evade the income tax of the large taxpayer. The jury was justified in assuming that the crux of this case turned on the answer to the question, To whom did the gambling houses belong and who was entitled to the income from their operations?

If these houses belonged to Johnson and he was entitled to the income and he excluded such income from his income tax returns and other defendants included such income as part of their returns when it was not in fact their income, then the crimes charged in the indictment were established. Of this there can be no doubt.

The proof of the ownership of the property, as well as the income, was not even circumstantial in character. It was direct and

positive. Defendants' only hope of escaping from its telling effect was to show the testimony of the Government witnesses to be false. This they endeavored to do. Apparently the jury disbelieved their witnesses and accepted the testimony of the Government witnesses. Reduced to its last analysis, this issue determined the merits of the case. We have been favored with instructive briefs. A clearer case for the jury could hardly be presented.

There are many other assignments of error. The trial was long, and the questioned rulings are numerous. The trial court's refusal to instruct the jury as requested; its rulings on admission and rejection of evidence; its participation in the examination of witnesses—all come in for criticism and challenge.

In short, it is earnestly argued that the defendants were not given a fair trial.

The case was one which necessitated great care to prevent, if possible, the prejudice which jurors might naturally entertain against individuals who admitted they had long been, and were professional gamblers operating on a big scale, from affecting their deliberations of the charges stated in the indictment and which did not involve crimes arising out of their gambling operations.

Defendants were entitled to a fair trial on the charges preferred against them. Their guilt of offenses not charged in the indictment had no bearing (save as it may have affected credibility) on the charges set up in the indictment. In order that our judicial system and practice in criminal cases be vindicated, the utmost care is required so that no ruling or comment by the court take place which would have the effect of communicating to the jury an impression that the court was unfavorable to defendants.

In view of the fact that the case is to be reversed and dismissed, according to the majority opinion, I call attention merely to one instruction of the trial judge to show its eminent fairness.

The court said:

"You must not permit the kind of business in which the defendants were engaged to prejudice you against them or any of them. The fact, if it be a fact, that some defendant or defendants committed some offense against the laws of the United States or the State of Illinois other than those charged in the indictment creates no presumption that such defendant or defendants committed the offense here charged against him or them."

The language speaks for itself. It was clear, explicit, and positive. Defendants could not ask for more. Their requests may have been more wordy and more argumentative, but they did not better state the law than the foregoing instruction.

It was not necessary that the trial court give instructions in the language of defendants' counsel, provided the substance of this proposed charge was clearly and fairly stated. The charge is often better when couched in the language of the judge for it is fairer and less argumentative and prejudicial.

There are two different theories or conceptions of trials in criminal cases. The one which appeals to me, views the trial as a means of ascertaining a fact—that fact being the guilt or innocence of the accused.

Rules governing such trials favor the accused. This policy of favoring the accused is the result of generations of experience. It has for its background the making certain that no innocent person shall be convicted—that it is better that many who are guilty be acquitted than one innocent person be convicted. The rules which ordinarily accomplish this result are too well known to require restatement. Except for them, a fair trial in a criminal case is quite similar to that in a civil case. In both cases, it should be a search, through competent and relevant evidence of the best nature, for the truth.

On one side is society seeking to protect itself and restrain the violator from stepping outside the law to enrich himself or to accomplish a selfish end at the expense of others. On the other side is the accused, in whose favor presumptions are created to protect him in the enjoyment of his liberty and in his reputation as one of a society of law-abiding citizens.

Although the personal element will always be more pronounced in a criminal case than in a civil suit, the controversy should, in the last analysis, be simply an honest inquiry into the accused's guilt or innocence.

The other theory of a trial in a criminal case is entertained by members of the bar engaged chiefly in handling criminal cases. To them it is a fencing contest between counsel, where the real issue of fact, to wit, the guilt or innocence of defendant is lost in the heat of the duel between opposing counsel. The sole effort is to inject error into the trial. The longer the trial the better the chance of error. Hence a jury trial is demanded for the opportunities of injecting error are thereby multiplied. And every erroneous ruling is presumptively prejudicial.

This theory finds some support in early judicial precedents. Such holdings rise to dominant importance if only they be in point. And that is so regardless of their vintage or the absence of sound reason to support them. In this view all later cases ignoring or inferentially overruling such earlier precedents, are brushed aside as out of harmony with the rule which gives the

accused the benefit of all doubts. This view necessitates the rejection of reason and all growth, change, or development of the law in the field of criminal trials.

Admittedly this view makes for excitement and uncertainty in criminal cases, emphasizes the emotional side of all participating therein, and gives to the public—particularly the curious public—an opportunity for a thrill. In my opinion it is not promotive of justice, places a premium on long trials, adds to the expense, encourages questionable practices, and often brings the administration of justice into disrepute with law-respecting and law-abiding citizens.

A jury trial is demanded, not because of greater faith in the jury's ability to ascertain the truth, but because jurors are often more easily confused by a long trial, and errors are more likely in a long jury trial.

Stipulations of facts are never made, not because the facts are uncertain or unknown, but because some technical error may occur in the introduction of their proof, or the prosecution may have difficulty in securing the attendance of all its witnesses at one time. A pretrial conference is never held because the court is powerless to call one. There is no effort, as in a civil case, to confine the trial to the controverted issues. In short, the protection of society against the raids of its transgressors is overlooked or forgotten, and the decision goes according to the technical rules of the fencing contest.

It seems to me that the holding of the majority of the court is a vindication of the second theory above referred to. No prejudice to defendants is shown. A fairly drawn grand jury presented a charge, and a trial with conviction occurred. Not merely reversal but reversal with dismissal is ordered because the charge is made by a grand jury which obtained an order for its continuance so as to complete its inevstigation. Because perchance its investigation may have exceeded the crimes uncovered at its first term's study, its authority to act in any and all respects is lost.

On the entire record I am convinced that there was no prejudicial error committed, and that the judgments should be affirmed.

A true Copy:

Teste:

———— ————.

Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

And on the same day, to wit: On the fifteenth day of September 1941, the following further proceedings were had and entered of record, to wit:

Monday, September 15, 1941

Court met pursuant to adjournment.

Before Hon. EVAN A. EVANS, Circuit Judge; Hon. WILLIAM M. SPARKS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge.

7500

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

WILLIAM R. JOHNSON, DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court.

7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JACK SOMMERS, ET. AL., DEFENDANTS-APPELLANTS

Appeal from District Court of the United States for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the Transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this Cause appealed from be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court.

And afterwards, to wit: On the thirtieth day of September 1941, there was filed in the office of the Clerk of this Court, a

motion for leave to amplify the record, which said motion is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

Nos. 7500–7501

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

WILLIAM R. JOHNSON, ET AL., DEFENDANTS-APPELLANTS

Motion for leave to file order of the United States District Court amplifying the record

Now comes the United States of America by J. Albert Woll, United States Attorney for the Northern District of Illinois, and respectfully represents to this Court as follows:

1. That the opinion of the Court in the above entitled cause was filed on September 15, 1941, and that this cause is now pending the filing of a petition for rehearing on behalf of the United States on October 8, 1941.

2. That at the time of the preparation of the bill of exceptions in this cause the United States Attorney, having in mind the rules of this Court, agreed to the reduction of the testimony to narrative form, except in such instances as the defendants desired the same set out in question and answer form.

3. That in the opinion of the Court, as filed on September 15th last, it appears that the Court is under the impression that certain statements of the witness Frank J. Clifford were given voluntarily and without a previous question having been asked him.

4. That as a matter of fact in the trial of this cause the witness Clifford did not volunteer any statements and testified to nothing except in response to a question propounded to him by the examiner.

5. That the impression of the Court that he had testified voluntarily has undoubtedly arisen by reason of the fact that the testimony of the witness Clifford had been reduced in the printed record as filed to partially narrative form and to partially question and answer form.

6. That your petitioner did not at any time anticipate that the Court would construe the testimony of the witness Clifford as appearing in the printed bill of exceptions as indicating that the witness had volunteered any of his testimony, and that at no

place in the briefs filed on behalf of the appellants in this cause was any statement made that such had occurred.

7. Wherefore, your petitioner on September 26, 1941, after due notice to the appellants, filed his petition before the Honorable John P. Barnes, the trial judge in this cause, asking that the entire reporter's transcript of the testimony of the witness Frank J. Clifford be certified by the court as a part of the bill of exceptions in this cause, and on September 30, 1941, the said Judge Barnes entered an order certifying the transcript of the complete testimony of the witness Clifford in question and answer form as a part of the bill of exceptions in this cause and directing that the Clerk of the court certify the petition and order, together with the transcript of the testimony of the witness Clifford, to this Court.

Wherefore, your petitioner prays that this Court enter an order permitting the filing of the petition of the United States Attorney, the order of court, and the certified transcript of the complete testimony of the witness Frank J. Clifford as an amplification of the record in this cause.

———— ————,
United States Attorney.

And afterwards, to wit: On the first day of October 1941, there was filed in the office of the Clerk of this Court, a motion that certain orders of the District Court be made part of the record, which said motion is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

Nos. 7500–7501

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

WILLIAM R. JOHNSON, ET AL., DEFENDANTS-APPELLANTS

Motion for an order directing that the orders of the United States District Court of January 24, 1940, and February 28, 1940, extending the second December 1939 term grand jury, be made a part of the record in this cause and directing the clerk of the United States District Court to certify the same to this court

Now comes the United States of America by J. Albert Woll, United States Attorney for the Northern District of Illinois, and respectfully represents to this Court as follows:

1. That the record on appeal does not show the orders entered by the United States District Court on January 24, 1940, and Feb-

ruary 28, 1940, respectively, extending the second December 1939 Term Grand Jury into the February 1940 and March 1940 Terms, respectively.

2. That in view of the fact that the Court in its opinion in this cause, as rendered on September 15, 1941, has reversed the cause, holding that the order of the United States District Court of February 28, 1940, was void, it is respectfully suggested that both orders of the United States District Court should be a part of the record in this cause.

Wherefore, your petitioner prays that this Court enter an order directing that the orders of the United States District Court entered on January 24, 1940, and February 28, 1940, extending the second December 1939 Term Grand Jury for the Northern District of Illinois, Eastern Division, be made a part of the record in this cause, and directing that the Clerk of the United States District Court certify the same to this Court.

_____ _____,
United States Attorney.

And afterwards, to wit: On the fourth day of October 1941, there was filed in the office of the Clerk of this Court, a memorandum in opposition to motion of Government filed on Sept. 30, 1941, which said memorandum is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

Nos. 7500–7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

WILLIAM R. JOHNSON ET AL., DEFENDANTS-APPELLANTS

Memorandum in opposition to Government's motion filed herein on September 30, 1941

And now come the appellants, by counsel in cause No. 7501 and file this, their memorandum in opposition to the granting of the prayer of said motion, and as reasons for said opposition respectfully state as follows:

I

The outstanding and important events in connection with these appeals we state to be as follows:

(a) That the judgments of the District Court from which these appeals were taken were rendered by that Court on to wit, October 23, 1940;

(b) That thereafter and on the same date notices of appeal to this Court were filed with the Clerk of said District Court in accordance with the rules of this Court pertaining to appeals in criminal cases;

(c) That thereafter said appeals were perfected in accordance with said notices, and the bill of exceptions in said cause was approved by the District Court on to wit, January 21, 1941;

(d) That thereafter written briefs and arguments and reply briefs were filed by the respective parties in this Court and said appeals were orally argued at length on to wit, May 27, 1941;

(e) That on to wit, September 15, 1941, this Court rendered its opinion in said causes.

It is therefore urged that the District Court was without jurisdiction to enter the order of which a copy is sought to be filed herein.

II

That at no time during any of the proceedings in this Court did the plaintiff herein apply for a diminution of the record nor assert by any motion or suggestion in its brief and argument, or in any other manner, that the record upon which these appeals were predicated failed in any respect to comply with the rules of this Court touching the preparation of records on appeal; nor did counsel for plaintiff at any time criticize the fairness with which the testimony taken at the trial was narrated into the bill of exceptions, which the trial court certified as containing all of the evidence heard at said trial.

III

The effect of the motion now made, if allowed, would be to permit parties who have unsuccessfully litigated a cause to come before this Court and relitigate on some fanciful ground not theretofore presented for the Court's consideration. Such procedure would protract litigation to an extent limited only by counsel's ingenuity.

IV

These appellants deny, that, even if this Court should allow the filing of a stenographic transcript of the testimony of the witness Clifford in question and answer form, it would reveal any substantial difference from the narrative form of that testimony appearing in the printed record.

The testimony of this witness was of such character and of such importance, the narration thereof did not result in its reduction to any appreciable extent.

V

Counsel for plaintiff have not, by their motion or by memorandum in support thereof, pointed out to this Court wherein any part of the printed record of said testimony was inaccurate or that said record failed to fairly and properly convey to the Court the testimony given by the witness.

VI

The motion is an attempt to amend or vary a record in a case that has been fully presented and determined and finds no sanction in any Court Rule or the law of procedure, and proponents of the motion have suggested no authorities justifying the granting of such motion.

JOHN ELLIOTT BYRNE,
EDWARD J. HESS,
Attorneys for Appellants in Cause No. 7501.

JOHN ELLIOTT BYRNE,
105 West Adams Street.
EDWARD J. HESS,
111 West Monroe Street.

(Reservation being hereby made for the filing of further suggestions in opposition by Floyd E. Thompson, Esq., counsel for appellant in cause No. 7500, upon his return to the city October 8, 1941, it being understood that should Mr. Thompson not wish to add to the above, he will so notify the Clerk of this Court.)

And, on the same day, to wit: On the fourth day of October 1941, there was filed in the office of the Clerk of this Court, a memorandum in opposition to motion of Government filed on October 1, 1941, which memorandum is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

Nos. 7500–7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

WILLIAM R. JOHNSON, ET AL., DEFENDANTS-APPELLANTS

Memorandum in opposition to Government's motion filed herein on October 1, 1941

And now come the appellants, by counsel in cause No. 7501, and file this their memorandum in opposition to the granting of

the prayer of said motion, and as reasons for said opposition respectfully state as follows:

I

The orders in question were not offered in evidence at the trial of this cause; therefore, would not be a proper subject of the bill of exceptions.

II

The order entered January 24, 1940, continuing the Grand Jury from the December 1939 term to the February 1940 term was not made the basis of an issue in the case.

III

The verbatim provisions of the order of February 28, 1940, purporting to extend the life of the December 1939 Grand Jury from the February 1940 term to the March 1940 term appears, both at pages 28 and 32, of transcript of record.

IV

The allegations of fact of the plea in the nature of a motion to quash appearing at page 32 of the transcript are admitted by plaintiff's motion to strike appearing at page 43 of the transcript.

V

The order of the District Court appearing at page 45 of the transcript overruling and denying the said pleas and motions without a hearing as to the fact questions tendered, notwithstanding the motion of appellants as appearing at page 44 of the transscript that the plaintiff reply thereto, further evinces an admission on the part of the Government that the order of February 28, 1940, was accurately quoted in the plea and motion hereinabove referred to.

VI

The invalidity of the order of February 28, 1940, as appearing in the transcript of record above referred to, was fully argued by counsel for appellant in case No. 7500 beginning at page 102 of his brief and argument, and by counsel for appellants in case No. 7501 commencing at page 11 of their brief and argument.

Counsel for plaintiff attempted a reply to these arguments commencing at page 106 of their brief and argument, to which counsel for appellant in case No. 7500 replied commencing at

page 25 of his reply brief; and counsel for appellants in case No. 7501 replied in their reply brief commencing at page 3.

Thus it will be seen, not only was it conceded in the District Court by counsel for plaintiff, that the order of February 28, 1940, as appearing in the pre-trial pleadings. (Tr. 28, 32) was a correct copy of said order, but such correctness was projected throughout the entire proceedings in this Court, and there is nothing in the motion now presented to the Court to the effect that the order so quoted was not accurate in all respects.

VII

The motion is an attempt to amend the record of causes which has been fully presented, argued and determined; in fact it is an attempt to alter such a record to make it speak differently from that certified by the District Court. Such motion finds no sanction in law, and no authority is cited by proponent to justify the granting thereof.

JOHN ELLIOTT BYRNE,
EDWARD J. HESS,
Attorneys for Appellants in Cause No. 7501.

JOHN ELLIOTT BYRNE,
105 West Adams Street.
EDWARD J. HESS,
111 West Monroe Street.

(Reservation being hereby made for the filing of further suggestions in opposition by Floyd E. Thompson, Esq., counsel for appellant in cause No. 7500, upon his return to the city October 8, 1941, it being understood that should Mr. Thompson not wish to add to the above, he will so notify the Clerk of this Court.)

And afterwards, to wit: On the seventh day of October 1941, there was filed in the office of the Clerk of this Court, a petition for a rehearing, which said petition for a rehearing is not copied here.

And afterwards, to wit: On the thirteenth day of October 1941, there was filed in the office of the Clerk of this Court, in cause No. 7500, an answer to petition for a rehearing, which said answer is not copied here.

And afterwards, to wit: On the sixteenth day of October 1941, there was filed in the office of the Clerk of this Court, in cause No. 7501, an answer to petition for a rehearing, which said answer is not copied here.

And afterwards, to wit: On the fifth day of November 1941, the following further proceedings were had and entered of record, to wit:

Wednesday, November 5, 1941.

Court met pursuant to adjournment.

Before Hon. EVAN A. EVANS, Circuit Judge; Hon. WILLIAM M. SPARKS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge.

7500

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

WILLIAM R. JOHNSON, DEFENDANT-APPELLANT

7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JACK SOMMERS, ET. AL., DEFENDANTS-APPELLANTS

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division

It is ordered by the Court that the motion of counsel for appellee for leave to file in this Court the petition of the United States Attorney and the order of the District Court thereon authorizing the inclusion of the testimony of witness Frank J. Clifford as a part of the record on appeal and the certified transcript of the complete testimony of said witness Frank J. Clifford as an amplification of the record in the cause be, and the same is hereby, granted, and the said petition, order thereon, and transcript of testimony are hereby ordered filed in this Court as an amplification of the record in this cause.

It is further ordered by the Court that the motion of counsel for appellee for an order directing that the orders of the said District Court entered on January 24, 1940, and February 28, 1940, extending the Second December 1939 Term Grand Jury, be made a part of the record in this cause, and that the Clerk of the said District Court certify the same to this Court, be, and the same is hereby, denied.

And afterwards, to wit: On the sixth day of November 1941, there was filed in the office of the Clerk of this Court, the opinion of the Court on petition for rehearing, which said opinion is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

October Term and Session, 1941

No. 7500

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

WILLIAM R. JOHNSON, DEFENDANT-APPELLANT

No. 7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JACK SOMMERS ET AL., DEFENDANTS-APPELLANTS

On petition for rehearing

November 6, 1941

Before EVANS, SPARKS, and MAJOR, Circuit Judges.

MAJOR, Circuit Judge. In connection with the petition for rehearing, plaintiff has sought and obtained leave to file a transcript of the testimony of the witness Clifford. This was desired because of statements made in the majority opinion that the witness volunteered certain testimony, that he testified in certain instances without a question and perhaps other statements of similar purport. An examination of the transcript of the testimony of this witness discloses that such statements in the majority opinion were erroneously made and that all the testimony given by him was in response to questions.

The majority opinion is therefore modified in this respect so as to reflect the true situation. Such modification, however, does not affect the holding of the majority relative to the erroneous nature of his testimony. After a study of the petition for rehearing, the court is satisfied that there is nothing presented which requires further consideration. Judge Evans adheres to the views expressed in his dissenting opinion. The petition for rehearing is therefore denied.

A true Copy:
Teste:

_____,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

And on the same day, to wit: On the sixth day of November 1941, the following further proceedings were had and entered of record, to wit:

Thursday, November 6, 1941

Court met pursuant to adjournment.

Before Hon. EVAN A. EVANS, Circuit Judge; Hon. WILLIAM M. SPARKS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge.

7500

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE
vs.
WILLIAM R. JOHNSON, DEFENDANT-APPELLANT

7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE
vs.
JACK SOMMERS ET AL., DEFENDANTS-APPELLANTS

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division

It is ordered by the Court that the petition for a rehearing of these causes be, and it is hereby, denied.

United States Circuit Court of Appeals for the Seventh Circuit

I, KENNETH J. CARRICK, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages *pages* contain a true copy of the opinion of the Court, the judgments entered thereon, motions relative to amplification of the record, memorandum in opposition thereto, order of November 5, 1941, relative to amplification of the record, opinion of the Court on petition for a rehearing, and order of November 6, 1941, denying petition for a rehearing, in the following entitled appeals: 7500, The United States of America, Plaintiff-appellee vs. William R. Johnson, Defendant-appellant; 7501, The United States of America, Plaintiff-Appellee vs. Jack Sommers et al., Defendant-appellants, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this third day of December A. D. 1941.

[SEAL]

KENNETH J. CARRICK,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1941

Supreme Court of the United States

No. 799, October Term, 1941

Order allowing certiorari

Filed February 2, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Murphy and Mr. Justice Jackson took no part in the consideration and decision of this application.

Supreme Court of the United States

No. 800, October Term, 1941

Order allowing certiorari

Filed February 2, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Murphy and Mr. Justice Jackson took no part in the consideration and decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1942